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ROYAL COMMISSION

ON

TRANSPORTATION

SUMMATIONS AND ARGUMENTS

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TABLE OF CONTENTS

I - INTRODUCTION

II - STATEMENT AND RELATED GOALS

Statement for setting and setting

History

Legal effect of 1923 Act

Just and reasonable rates

Advances and costs of grain in export

position in Canada

SUBMISSION

OF

CANADIAN PACIFIC RAILWAY

TO

THE ROYAL COMMISSION ON TRANSPORTATION

Principles of costing

Variable costs

Constant cost

Cost of money

Analysis of cost study

Grouping of accounts

Cost of basic freight unit

Train miles - productive miles

Car days

Relating line

Development of unit variable cost

Multiple regression analysis and cost

maintenance expenses

Equipment expenses

Locomotive expenses

Locomotive depreciation

SUMMATION AND ARGUMENT

Freight rates

Transportation

Rate

Rate structure

Train other charges

Station charges

Loss and damage

Train indicator supplies - Train equipment

expenses

Traffic, haulage, transportation (fuel)

costs and taxes

Rate of concentration

Summary of cost study

Constant cost in the light of rates

Solution to the statutory grain rate problem

III - FREIGHT RATE STRUCTURE

Legislative and economic principles

Comparison of the freight rate structure

Dr. Hargrave's report

Dr. Hargrave's report

Dr. Hargrave's report

The Maritime Commission

Maritime Transportation Commission

Index

Appendix A - Table of Rates

TABLE OF CONTENTS

	<u>Page</u>
I - INTRODUCTION	1
II - STATUTORY AND RELATED GRAIN RATES	8
Necessity for scrutiny and action	8
History	18
Legal effect of 1925 legislation	22
Just and reasonable level of rates	28
Revenues and costs of moving grain to export positions in Western Canada	33
Revenues	37
Principles of costing	38
Variable costs	38
Constant cost	42
Cost of money	45
Methods of cost study	52
Grouping of accounts	53
Count of basic output units	54
Train miles - Locomotive miles	55
Car days	60
Switching time	64
Development of unit variable cost	68
Multiple regression analysis and road maintenance expenses	68
Equipment maintenance	78
Locomotive repairs	78
Locomotive depreciation	80
Freight car repairs	80
Freight car depreciation	82
Transportation	84
Fuel and crew wages	84
Yard expenses	85
Train other expenses	85
Station expenses	86
Loss and damage	88
Train locomotive supplies - Train enginehouse expenses	88
Traffic, General, Communications (Rail), Rents and Taxes	88
Areas of conservatism	91
Summary of cost study	94
Constant cost in the level of rates	98
Solution to the statutory grain rate problem	101
III - FREIGHT RATE STRUCTURE	116
Legislative and economic principles	118
Complaints on the freight rate structure itself	125
Dr. Harries' proposal	126
Dr. Williams' proposal	131
Dr. Roberts' proposal	132
The Maritimes proposals	142
Maritime Transportation Commission	142
Dosco	145
Acadia-Atlantic Sugar	145

	<u>Page</u>
Is there an inequity arising from the rate level of non-competitive rated traffic?	146
Complaints on horizontal percentage increases	151
The Alberta proposal	151
The Saskatchewan proposal	154
The Manitoba proposal	156
Province of Ontario	160
Province of Quebec	161
Maritime Provinces	161
The effect of horizontal percentage increases in fact.	162
Is there an inequity arising from the horizontal percentage increase method?	167
The British Columbia freight rate structure proposal	169
Use of the freight rate structure to overcome economic disabilities	180
Specific freight rate matters	184
Long and short haul discrimination - Alberta	184
Long and short haul discrimination - Manitoba	189
Interline rates - Manitoba	191
The aggregate of separately established rates - Manitoba	194
Per car rates and incentive loading - Manitoba	195
Proposals of Canadian Trucking Associations regarding agreed charges and competitive rates	195
IV - OBLIGATIONS AND LIMITATIONS	202
Branch lines	202
Description	203
The issues	204
Criteria in considering economics of branch lines	206
Mr. Saunders' errors	207
No burden on freight shippers	211
Burden of statutory grain rates	212
Substitution of other media	212
Area planning the wrong approach	216
Meaning of national and public interest	217
Manitoba's proposal for maintenance fund	220
Length of notice on abandonment applications	221
Proposed legislation	221
Passenger train service	223
The issues	224
Reduction in last ten years	224
Passenger train service not required in national interest	225
Passenger train service burden	226
Mr. Saunders' estimate - incorrect concept	227
Commuter service	229
Proper disposition of passenger train burden	229
Discontinuance - proposed legislation	234
Free transportation - proposed legislation	236
V - ECONOMICAL AND EFFICIENT RAILWAY TRANSPORTATION	239
Canadian Pacific record in post World War II period	239
Manitoba's evidence answered	240
Areas of further progress	242
Railways not a declining industry	243
Co-operative measures - C.N. - C.P. Act	246

	<u>Page</u>
VI - OTHER INCOME	250
Historical treatment	250
Non-rail investment of Canadian Pacific	252
Investment in properties	252
Investment in securities	254
Land holdings	255
Review of events preceding contract of 1880	255
Contract of 1880 and statute of 1881	258
Segregation of rail and non-rail:- Matter for Board	262
VII - OTHER MATTERS	265
Appeals from the Board to the Governor in Council	265
Operation of trucks by railways	272
APPENDIX OF PROPOSED LEGISLATION	i-iv

I - INTRODUCTION

Canadian history is replete with discussions of transportation and its role in the Canadian economy. The development of transportation has been detailed in text books and in the reports of the numerous Royal Commissions that have considered the subject. The facts of Canadian geography and the economy of the country make adequate and efficient transportation a prime requisite. Over the years there have been marked changes in the transportation industry in Canada. Technological advances have been great and investment in the industry has increased with the growth of the country.

In earlier years water and rail transportation were the only reasonable means of transport, except for the shortest distances. Highway, air, and pipe line transportation has developed tremendously in the post World War II period, but it is recognized that railway transportation is and will remain in the foreseeable future the basic transportation medium for the movement over extended distances of the greatest proportion of goods shipped and received by Canadians.

Providing railway transportation is a highly complex undertaking involving heavy capital investment and requiring managerial experience and skills of the first rank. Railway pricing is equally complex and also requires experience and skills. Inevitably the provision and pricing of railway transportation raises problems. That a complex industry has problems is not surprising. Problems are a normal result of business activity.

The Commission in its many months of hearings has had the advantage of receiving representations on behalf of all provincial governments, in most cases from the First Minister of these provincial governments. It has received representations from all segments of industry. It has had full representations from railway

management including chief executive officers, operating, traffic, engineering, accounting and research officers. These railway officers were experienced and many of them called by Canadian Pacific carried the responsibility of making the enterprise pay. It will have been apparent to the Commission that it is the philosophy of the management of Canadian Pacific to operate as a team in which there is a melding of theory and experience, of joining together those with special training and knowledge and those of broad general experience.

Because of the essential part rail transportation plays in the Canadian economy and of the interest of many Canadians in railway transportation, railway problems are a matter of public discussion. The fact that railway plant has a long life also provides an opportunity for hindsight. Railway transportation has proved to be an inviting playground for planners, economists, accountants and statisticians. With the great interest displayed in railway transportation by so many and because the business is a service industry, it is to be expected that there will be no dearth of complaints or suggestions, as your Commission has found.

The policy of Canada was that railways should operate as a private enterprise. As the Duff Commission stated:

"Government ownership of railways on a large scale as a national policy was not contemplated or planned by any government and was not submitted for adoption to the people of Canada."
(Page 13)

Government operation of railways on a large scale was an accident. However, as a result, a unique situation has developed in that railway transportation in Canada is dominated by competition between a state enterprise and a private enterprise. Both must be governed by business principles, regardless of ownership.

Canadian Pacific began because the Parliament of Canada repeatedly declared a preference for the construction and operation

of such railway by means of an incorporated company rather than by the Government. As stated by the Duff Commission:

Canadian Pacific ". . . honourably discharged their original contractual obligations with Parliament, and the company's lines had played a great part in binding together the western and eastern provinces of the Dominion. By common consent, the Company's administrators had brought faith, courage and invincible energy to the task of building its lines through the undeveloped west. The company's achievement commanded the admiration of both railway operators and the public, and has been a material factor in causing Canada to be favourably known upon three continents. Their operations brought profit to shareholders, and the enterprise became a national asset of acknowledged value and importance to the Dominion."
(Page 12).

In saying this in 1932 the Duff Commission also noted the fact that Canadian Pacific was Canada's largest taxpayer. The continued operation of Canadian Pacific as a private enterprise is of immense benefit to Canada and with a few exceptions, no one appeared before the Commission who indicated otherwise. As is evident, the management and staff of Canadian Pacific are proud of its history and are confident of its future if inequitable limitations and obligations are not placed upon it.

The inquiry which your Commission was directed to undertake raises the question of what policy shall be pursued in future in dealing with the railways of Canada. Canada now is a major producer of commodities for export. Further development of the extractive industries of Canada holds substantial promise. These extractive industries and the secondary industries they develop require low-cost, efficient transportation by land, which only the railways can provide. The provision of low-cost and efficient railway transportation requires the railway industry to be financially sound. Financially sound railways require equitable treatment in regard to the charges they may assess, the limitations that are placed upon them and the impact of taxes.

The fundamental position of Canadian Pacific is that financially sound railways are essential to the economic well-being

of Canada. This basic principle was acknowledged as correct by many who appeared before your Commission, including the spokesmen for the governments of the provinces of Quebec (Vol. 126 - 20860), Ontario (Vol. 42 - 7100/1), Manitoba (Vol. 29 - 4330; Vol. 32 - 4999), Saskatchewan (Vol. 89 - 15330), Alberta (Vol. 36 - 5662), British Columbia (Vol. 38 - 6131; Vol. 76 - 13448); and the spokesmen for Canadian Horticultural Council (Vol. 52 - 9544), Canadian Industrial Traffic League (Vol. 53 - 9789) and Saskatchewan Wheat Pool (Vol. 121 - 20081).

In the post World War II period Canadian Pacific has been faced with meeting the challenge of changing shipping and travelling habits of its patrons; of applying and developing new technology; of meeting rapidly rising costs of labour, materials and taxes; and of adjusting its pricing to meet the requirements of operating on a financially sound basis. In meeting these conditions, problems have developed. In some cases, solutions are within managerial control. In others they are not.

Order-in-Council P.C. 1959-577 dated May 13, 1959, appointed you Commissioners to inquire into and report upon problems relating to railway transportation in Canada, the causes thereof and to recommend solutions thereto. This general responsibility was delineated under five heads:

(a) inequities in the freight rate structure, their incidence upon the various regions of Canada and the legislative and other changes that can and should be made, in furtherance of national economic policy, to remove or alleviate such inequities;

For this specific directive to be operative, it is necessary to first show an inequity in the freight rate structure. That is to say, it must be shown that the matter raised is unfair or unjust and that the legislative or other action proposed would result in removing the unfairness in an equitable manner.

(b) the obligations and limitations imposed upon railways by law for reasons of public policy, and what can and should be done to ensure a more equitable distribution of any burden which may be found to result therefrom;

Under this specific directive, the Commission is concerned with obligations and limitations imposed by law for reasons of public policy. When it is demonstrated that such an obligation and limitation is so imposed upon the railways, the Commission is concerned with measuring the burden and determining methods to ensure an equitable distribution of the burden.

(c) the possibilities of achieving more economical and efficient railway transportation;

The important point here is that economies and efficiencies are, under the directive, conjunctive; that is to say, economies that impair efficiency are not to be considered.

(d) whether, and to what extent, the Railway Act should specify what assets and earnings of railway companies in businesses and investments other than railways should be taken into account in establishing freight rates;

Under this specific directive the Commission is asked to determine whether, and if the answer to this is "yes", then to what extent the Railway Act should specify that Other Income be taken into account in establishing freight rates.

(e) such other related matters as the Commissioners consider pertinent or relevant to the specific or general scope of the inquiry.

This is a general power that gives the Commission authority to inquire into and consider any matter which in its view is relevant to the carrying out of its general and four specific directives.

The numerous hearings of the Commission in all parts of Canada have made clear the major issues before it. These may be shortly stated:

(1) The just and reasonable level of the statutory grain rates -- the Crow's Nest grain rate problem.

(2) The freight rate structure and the incidence of freight rates under that structure. This issue includes the basis upon which rates are made and the method of increase followed in general revenue cases.

(3) The railway plant, its size and adjustments in it to meet the present and future requirements of traffic. This issue includes passenger train services, branch line operations and co-operation between Canada's two major railways.

Of these major issues, the statutory grain rate issue has predominated in matter of time and evidence adduced in the formal hearings of the Commission which have extended over eighteen months. The reason for this is not difficult to understand. It is the only issue which is beyond the power of management to deal with. It is the only revenue item in the whole of railway transportation which is not open to adjustment to meet changing conditions and cost of transportation. It is the only issue which is before your Commission which has not been definitively investigated by former Royal Commissions on Transportation or by the Board of Transport Commissioners in general revenue cases and in individual rate disputes. It is an issue involving one of Canada's most important industries; the welfare of which dominates the economy of the Prairie Provinces and in which Eastern Canada and the Pacific Coast have a vital interest.

For a short period at the end of the First World War grain rates were allowed to rise to meet increased costs of transportation. Since that time the spokesmen for the Western agricultural community have been fearful of having an important part of their costs of production increased. Not until the present Commission's hearings was there ever advanced as a solution a plan which recognized the economic difficulty of the Western grain grower and insulated him from increases in costs for the transportation of his grain to export positions in Western Canada without imposing substantial inequity on others. That the Western Canadian farmer's difficulties are great has been fully recognized by Canadian Pacific. That he needs assistance because of facts beyond his control was not disputed by anyone.

The grain issue was placed in the predominant position at the commencement of your hearings and the Commission has had the opportunity for full and intensive investigation of all relevant facts. The cost of providing the Commission with the facts, views and the contentions of the parties on this issue has been very great.

Again, your Commission has the unique advantage of having among its members men with knowledge of Western Canada, with knowledge of rate making, with knowledge of costing techniques, with knowledge of business principles, and with knowledge of railway operations.

The statutory grain rate issue is not a transitory issue. It is an issue that will not solve itself. In fact, the burden of the fixed grain rates will grow. It is an issue which, left in its present state, continues to cause friction between railways and the people they serve, and between sections of Canada. It is the railways' largest single unsolved problem. It is therefore an issue which must be determined.

It has been indicated that the issue should not be faced; that something might happen to resolve it. There are no facts to justify such a hope. The resilience of Canadian Pacific to adversity without becoming a burden on the people of Canada is great. It is not, in our view, overstating the situation to say that this resilience will be destroyed by requiring Canadian Pacific to continue to handle from one-quarter to one-third of its total freight transportation at unrealistic and unremunerative charges. It is the view of Canadian Pacific that this Commission cannot but fail unless it uses its talents, its skills and its knowledge and applies them to the facts which have been so thoroughly developed and makes definitive recommendations in regard to the grain issue.

Some have seemed to suggest that the statutory grain rate problem is not as great a problem as passenger services and branch lines. In the submission of Canadian Pacific this is clearly wrong.

Some people have seemed to conclude that there are not a number of distinct railway problems but merely a single railway problem. This is also wrong. Some do not seem to have realized that the distinct problems require distinct solutions and that no overall solution is appropriate. The issues must be identified and dealt with separately. In the case of passenger services for example, while not minimizing its importance, Canadian Pacific is confident that it can, with some understanding, deal with this as it is within the power of management to control and solve.

A subsidy is an exceptional remedy and should only be used in the most unusual circumstances and in cases where its purpose is clearly apparent. A subsidy is not the proper solution for passenger services or for branch lines. Such a solution can only result in perpetuating the problems and in a misallocation of resources. To regard all railway problems as being one and to attempt to solve them by a single subsidy would be a disservice to the nation, its shippers and the railways. In addition, and this is vital, an overall subsidy in alleged remedy of all railway problems inevitably would endanger Canadian Pacific as a private enterprise.

It will be the purpose of this presentation on behalf of Canadian Pacific to deal with each of the major issues set out above and to deal with other questions arising from the scope of the Commission as delineated in the Order-in-Council constituting it.

II - STATUTORY AND RELATED GRAIN RATES

At the outset of the Commission's inquiry the position of Canadian Pacific was made clear:

" . . . that the greatest inequity in the freight rate structure -- and possibly the only one of significance -- is that which results from what is known as the statutory rates on grain and grain products in Western Canada."

(Preliminary Organizational Meetings, September 17 and 18, 1959, page 9)

Aside from traffic moving on the Crow's Nest basis of rates, all freight rates in Canada must be made on the established basis of rate making and must be just and reasonable; that is, they must be compensatory and if below the ceiling rates, their level must be justified at such level because it is required to enable the traffic to move freely and maximize the net revenues of the carrier. The overall level of rates must not produce net revenues in excess of the permissive net rail earnings of the carrier as fixed by the regulatory tribunal.

The Railway Act puts the Crow's Nest grain rates in a position all by themselves, completely free from inquiry by the Board of Transport Commissioners and beyond the power of the railways to change and alter as changing conditions or cost of transportation may from time to time require. They are the only rates which the Railway Act exclude from the test of "just and reasonable".

The transportation of grain and grain products moving at statutory and related rates to export positions in Western Canada is an extremely large portion of the total transportation work done by Canadian Pacific. In 1958 this traffic constituted 42.2% of the total revenue ton miles of traffic handled by Canadian Pacific in Western Canada (Volume 19 - 2646) and 26.19% of total system revenue ton miles (Volume 17 - 2455). This has not been disputed.

Mr. Crump noted that:

" . . . generally speaking, Canadian Pacific carries about 55 percent of the western grain crop to export positions and the Canadian National about 45 percent".
(Volume 26 - 3815).

The movement of the Western grain crop in 1925 was stated by the Royal Grain Inquiry Commission, consisting of Mr. Justice Turgeon, Professor Rutherford of the University of Saskatchewan, Dr. D. A. MacGibbon of the University of Alberta and Mr. James Guthrie Scott, of Quebec, in this way:

"Moving the crop from Western Canada is a transportation task of the highest magnitude".
(page 35)

Since 1925 when that report was made, the extent of the peak of the grain movement has been to some degree alleviated but, as the evidence shows, not entirely. In the intervening years the amount of grain moved has increased most substantially, although as a percentage of total traffic, it is not as large as it was 35 years ago. The increase in rail transportation costs since the grain rates became statutory in 1925 to the present has been great and it is impossible for the railways to be financially sound and handle the large movement of grain involved at a rate level established in Queen Victoria's day.

Only the Crow's Nest grain rates in the whole of the Canadian freight rate structure have stood immune and isolated from adjustment to meet changing conditions and changing cost of transportation. The essential Canadian railway transportation business can live within reasonable limitations in the public interest. It cannot meet the demands of efficient low-cost transportation, while at the same time carrying the burden of moving the Western grain traffic to export positions at unremunerative rates - rates tied to the 1899 level.

The disparity between the price level of 1899 and the present on major railway items was described by Mr. Crump:

"The movement of grain and grain products, particularly since World War II, has occurred in a period of rapidly rising labour and material costs. For instance, when the Crow's Nest Agreement was fully implemented in 1899, the average hourly labour cost was 18¢, new rail was \$17.00 per net ton and a 30-ton box car was approximately \$600. In 1958 the average hourly labour cost at \$2.21 was more than 12 times the 1899 labour cost. New rail at \$120 per net ton was 7 times the cost of 1899 and a new 60-ton box car at \$9,100 was 8 times the per capacity ton cost of 1899."
(Vol. 26 - 3765)

Federal income tax, which was unknown in 1899, is now 50%.

There was general agreement among those appearing before the Commission that railway rates should be compensatory, that is, that they should return their variable cost and something more.

For example, when Colonel J.J. Harold, one of the witnesses for Quebec, was being questioned by Mr. Sinclair, the following exchange took place:

"Mr. Sinclair: And I think you have also made it clear, and possibly I could use Mr. Frawley's words of yesterday, that any sort of rate in the rate structure must be compensatory or it should not be allowed to remain there?

"Colonel Harold: That is true."
(Vol. 126 - 20860)

Counsel for Alberta had stated the matter this way:

" . . . and I am putting aside the question of compensatory; there isn't really very much question about that, that an agreed charge and a competitive rate, and any sort of rate in the rate structure must be compensatory or it should not be allowed to remain there . . . "
(Vol. 125 - 20819)

Despite the acceptance of this principle, it is extraordinary to realize that the rates on statutory grain traffic have not been studied since the time they were made statutory in 1925. In fact, it can fairly be said that some people have strenuously opposed any suggestion that an examination of these rates be made.

The Order-in-Council establishing the Commission requires it to consider and report upon inequities in the freight rate structure, and the obligations and limitations imposed on railways by law. The obligation on railways to carry the statutory grain traffic at the 1899 rate level in the light of events as they have developed to the present time has created an inequity in the freight rate structure. This inequity is the principal problem relating to railway transportation in Canada.

Recognizing the importance of this matter, the Commission unanimously ruled:

". . . that under the terms of its reference evidence in regard to the effect, costs and financial consequences of statutory rates is admissible . . . "
(Preliminary Organizational Meetings, September 17 and 18, 1959, page 134).

Other parties appearing before the Commission were also of the view that a close study should be made of statutory grain

rates. British Columbia said:

"The laudable objectives of the Crowsnest rates were defined at a time when economic conditions were very much different from those of today, or even those of 1949 when the Turgeon Commission was holding its hearings. The Turgeon Commission did not think that the time had arrived for Parliament to relinquish control of the rates. However, it noted that 'such a time may come later with the evolution of the country's economic position' (page 249). It is submitted that this time has now arrived due to the vastly changed economic conditions since 1899 and even since 1949." (Vol. 41 - 6939/40).

In its submission, Quebec said:

"Le gouvernement de la province de Québec croit que l'on devrait étudier sérieusement les arguments pour et contre la rétention des tarifs de la Passe du Nid de Corbeau. On devra également suggérer, le cas échéant, les remèdes appropriés." (Vol. 124 - 20520).

When Colonel Harold, one of the witnesses for Quebec, was before the Commission, he said:

"Mr. Sinclair: Perhaps if I brought to your attention your recommendation 12 of the brief:

'If, in the light of the evidence, this Royal Commission concludes that an increase in the Crowsnest Pass Rates is justified, such increase should not be reflected in the sale price of grain, and hence, a subsidy from the federal government would be indicated.'

"My question is this: that properly reflects, does it not, the opinion of the government which you are representing here in the box?

"Colonel Harold: I would prefer to go to the French text.

(Note: The French text reads as follows:

"Il nous apparaît donc que si, à la lumière de la preuve la Commission royale jugeait nécessaire de recommander l'augmentation du tarif, cette augmentation ne devrait se refléter dans le prix de vente, d'où la nécessité d'une subvention à l'échelle de la nation.") (Vol. 124 - 20531)

"Mr. Sinclair: Now, I will let you pronounce it but I think that in regard to that paragraph it is the same.

"Colonel Harold: I'm sure my pronunciation is equally as impossible as yours.

"Mr. Sinclair: Now, my question is: in regard to that opinion expressed, that is the opinion of the province and of the government of Quebec?

"Colonel Harold: That in such event there should be government support in order to meet the difference between the cost and the rate imposed on the transportation enterprise."
(Vol. 126 - 20872)

Mr. George Gathercole, Deputy Minister of Economics for the Province of Ontario, and one of its witnesses, said:

"We are not sufficiently conversant with the complexities of the rate structure to contend that the rates charged for the movement of grain from Western Canada are not compensatory. That is a decision the Commissioners themselves will wish to make."
(Vol. 42 - 7134).

Later he said:

". . . I think if it is demonstrated conclusively that the railways are not getting sufficient revenue from the movement of any traffic, if that can be demonstrated, and that this is a continuing thing year after year, then I believe there should be some compensation for it in one way or another because, after all, the railways presumably must get their revenue from some source."
(Vol. 42 - 7174)

The Canadian Manufacturers' Association said:

"Any consideration of the problem relating to railway transportation in Canada, and particularly the obligations and limitations imposed upon railways by law for reasons of public policy, would not be complete without a detailed examination of the statutory rates imposed on the railways for the movement of grain and flour under the provisions of Section 328 (6) of the Railway Act and the related export rates on these commodities required to be published to Canadian Pacific ports and Churchill on Hudson's Bay by direction of the Board of Transport Commissioners or in compliance with provisions of the Act.

.....
"We submit it is of primary importance that there should be a thorough investigation of this matter to resolve whether the level of these statutory rates is compensatory."
(Vol. 53 - 9847/8)

Mr. George Paul, the witness for the Canadian Manufacturers Association, said:

"I would think it is a reasonable assumption that any rate which has not been increased since 1899 is hardly reasonable, I would say, today."
(Vol. 54 - 9912)

When Dr. Williams, one of the witnesses for Manitoba/Alberta, was before the Commission, the following exchange took place:

"Commissioner Anscomb: Doctor, would you like to tell us what you think in Canada -- and you are not in America now -- of a situation where you have got a large national railway that has 26% of its total freight traffic tied up to a freight rate charge of over half a century ago?

"Dr. Williams: Well, I think that is a thing that ought to be looked at with a very keen and careful eye. My feeling has always been that it is undesirable to peg these things too sharply, and certainly that there ought to be procedures for flexibility and for re-examination. What the situation would be here, of course, would depend on facts that are not within my knowledge; that is to say, I would think that these rates require to be tested since they have been in force for such a long period of time without change, and in the light of changes in technology of railroading, changes in composition of traffic, changes in the value of money and so on to see whether or not they are as of this time just and reasonable rates, because it certainly would not follow that because they may have been in 1897 that that is now true. But one could not say offhand merely from the fact they have been in effect for a long period of time that they are necessarily not satisfactory rates at the present time. There is a presumption, certainly, that they ought to be examined awfully carefully."
(Vol. 102 - 17152/3).

Mr. W. B. Saunders, the witness for the Grain Handling Organizations, said:

"Obviously, these rates, are subject to suspicion, as you suggest, because they are very low compared with your average traffic."
(Vol. 127 - 22002)

In addition to those who thought the rates should be investigated, many witnesses and groups who appeared before the Commission were of the view that if the Crow's Nest Pass rates were found to be non-compensatory, some remedial action should be taken. Examples are:

The view of Premier Manning of Alberta was:

"Mr. Sinclair: And I think, sir, that we would agree that if the western grain economy needed assistance in any way it should be a national obligation of all the people of Canada; would you agree?

"Premier Manning: I think that it was in the category of those things that could be regarded as being necessary to the interests of Canada as a whole, and therefore, as I said earlier, if in the light of the overall picture public aid is necessary, that would be one of the grounds on which that aid would be justified." (Vol. 36 - 5703/4).

The Victoria Chamber of Commerce said:

"The Victoria Chamber of Commerce is of the opinion that this Commission should look into the matter of the Crow rates, which are stated by the railways to be a major factor in their financial plight . . .

"If it is to be national policy that the export grain rates should be maintained at present levels, it is our opinion that the financial burden should be borne by the public treasury, rather than by requiring the railways to collect the subsidy as is done at present. (Vol. 38 - 6151/2).

The Vancouver Board of Trade said:

"If it is in the national interest that Canadian grain be sold in the world markets and in order to sell that grain a subsidy is required to maintain a price at coast ports, then the subsidy should be paid from consolidated revenue and borne by every person in Canada." (Vol. 39 - 6310).

The St. Catherine and District Chamber of Commerce said:

"If the national policy demands that export grain rates be subsidized such subsidy should be borne by the national treasury and not by the railways whose competitive position is impaired because they must charge more for non-grain traffic." (Vol. 42 - 7007).

The Board of Trade of Metropolitan Toronto said:

"The history of the statutory and related rates prescribed for grain and grain products traffic carried in Western Canada has been adequately covered in the railways submission and we doubt if this Board could add anything new to what they have said on this subject. It would appear, however, that as long as it remains government policy to maintain such rates at the level fixed by statute some arrangement is necessary whereby the railways will be reimbursed for losses, if any, sustained by reason of a policy which requires them to carry this traffic at rates unrelated to present costs." (Vol. 44 - 7466/7).

The Canadian Metal Mining Association said:

"It is recommended that railway transportation cost be reviewed with the object of:
(a) defraying the losses incurred by the railway companies as a result of the 'Crow's Nest Pass Agreement' by a subsidy from the Federal Government."
(Vol. 44 - 7578).

Mr. T. M. Kidd, a very experienced transportation man who appeared on behalf of the Canadian Horticultural Council, said:

"Mr. Sinclair: Let us take, for instance, a commodity such as western Canadian grain to export positions: as you know, that is frozen by statute, and my question to you is this: as a very experienced traffic man, what is your view in regard to that type of provision in the rate structure,

Mr. Kidd: Mr. Chairman, if I might answer that question as a person rather than as representing a national association ---

Mr. Sinclair: I think we could quite agree, in view of the fact that certain members are western provinces, that we could extend that courtesy to you. We are asking you as an expert transportation man, expressing an opinion based on your experience, rather than a representative of any association.

Mr. Kidd: I think that they should bear their share of the transportation costs that belong to them.

Mr. Sinclair: Do you think it is detrimental, or otherwise, to a realistic freight rate structure to have a segment such as the large movement of grain to export positions in western Canada frozen?

Mr. Kidd: Detrimental, yes".

(Vol. 52 - 9594).

The Canadian Industrial Traffic League said:

"The League respectfully requests that this Commission recommend that the Board of Transport Commissioners for Canada determine just and reasonable rates on grain and flour within the territory referred to in subsection 6 of Section

328 of the Railway Act, Chapter 234 and rates based on this formula as covered by general Order 448 of August 26, 1927, issued by the Board of Transport Commissioners for Canada.

The League recommends that the difference between any statutory rate and normal reasonable rates so determined be borne by the national treasury."

(Vol. 52 - 9630/1).

Mr. C. A. Wilson, General Traffic Manager of Canada and Dominion Sugar Company, said:

"Mr. Sinclair: And if it is in the national interest to maintain, for instance, the grain rates in western Canada at their existing level, the difference between that level and what would enable this traffic to take its proper place in the freight rate structure, it would be your opinion that this should be covered by government assistance to make up that spread between the existing rates and where the level would be to place that rate in proper relationship with the balance of the freight rate structure ?

Mr. Wilson: Yes, in my opinion it should be a specific subsidy and given to the particular industries in need, but should not be covered by freight rates or in the freight rate structure.

Mr. Sinclair: When you say that do you mean the burden should not be carried by the balance of the freight rate structure -- is that what you have in mind?

Mr. Wilson: Yes."

(Vol. 57 - 10368/9)

It is the position of Canadian Pacific that the evidence of these witnesses and others to the same effect is full recognition that a close and careful scrutiny of the statutory rates on grain is now warranted and if these rates are found to be non-compensatory,

that some remedial action be taken with respect to this large segment of traffic.

HISTORY

Mr. H.C. Reid, then Assistant Comptroller of Canadian Pacific and now Assistant Vice-President, Finance, explained the events leading to the passing in 1897 of "An Act to authorize a subsidy for a Railway through the Crow's Nest Pass" Statutes of Canada (1897) Chapter 5, and the agreement dated September 6, 1897, made pursuant to the statute (Vol. 14 - 1895 to 1902). Briefly, Mr. Reid pointed out that the Province of British Columbia had been long desirous of securing a railway line serving the southeastern area of the province and connecting with the railway system of Canada, and had chartered the British Columbia Southern Railway Company for this purpose and had also authorized land grants in aid of that company. In addition, in the early 1890's, British Columbia had addressed memoranda to the Government of Canada requesting assistance towards construction of such a line by a cash subsidy. Mr. Reid pointed out that the Federal Government was also anxious to have a railway built to this area, and had conducted negotiations with the officials of Canadian Pacific. Canadian Pacific itself, as early as 1892, began making surveys west of Lethbridge and to the end of 1896 had expended \$87,829 on such surveys. The end of the economic depression, which had begun shortly after 1892, led to a resumption of negotiations between the Company and the Government as a result of which the statute mentioned was enacted and the agreement made.

Mr. Reid's evidence also contains the facts relating to the actual construction of the railway and the cash and land subsidies received by the Company in connection with it. Mention of this phase of the matter will be made later.

Doctor George E. Britnell for Saskatchewan dealt with the history of the statutory grain rates in his paper entitled "Historical Analysis of the Crow's Nest Pass Agreement on Grain Rates .. a Study in National Transportation Policy" (Vol. 87 - 14949 to Vol. 88 - 15061).

Canadian Pacific, while it recognizes the eminence of Dr. Britnell as a historian, is not in complete agreement with some of his interpretations which lead to the conclusions he reaches with respect to the agreement.

Mr. Edsforth gave evidence with respect to the history of the rates themselves, established by the Crow's Nest Pass agreement of September 6, 1897 (Vol. 12 - 1484 to 1507). Mr. Edsforth described how the reduced rates on the westbound commodities became effective on January 1, 1898, and the reduced rates on grain to the Lakehead became fully effective on September 1, 1899. The Crowsnest rates remained in effect until 1903, when, by virtue of what is commonly known as the "Manitoba Agreement", made between Canadian Northern Railway and the Government of Manitoba, Canadian Pacific agreed to a reduction in certain grain rates below the Crow's Nest level on the understanding that the full reduction under the Manitoba Agreement, which was then in effect on the Canadian Northern, would not be operative. The Manitoba Agreement only covered rates from Manitoba shipping points to the Lakehead but to maintain relationships from grain shipping points further west, relative but somewhat smaller reductions were made from stations in Saskatchewan and Alberta.

This general level of grain rates to the Lakehead remained in effect until March 15, 1918, when the Board in the 15% Case ((1917) 22 C.R.C. 49) allowed an increase of 15% on both eastbound rates on grain and grain products to the Lakehead and on the westbound commodity rates from Eastern Canada to Western Canada subject to a maximum of 2¢ per hundred pounds on grain and grain products and subject to the level fixed by the Crow's Nest agreement on westbound commodities as a maximum. Then, in 1918, under Order-in-Council P.C. 1863, passed under the provisions of the War Measures Act, eastbound grain rates and the westbound commodity rates were increased along with a general increase in freight rates. This increase became effective August 12, 1918, and for the first time since September 1, 1899, most of the rates on grain and grain products to the Lakehead and rates on westbound commodities became higher than the level of the rates fixed

by the Crow's Nest agreement.

In 1919, the Railway Act was revised and Section 325 (5) was added, reading as follows:

"Notwithstanding the provisions of section three the powers given to the Board under this Act to fix, determine and enforce just and reasonable rates, and to change and alter rates as changing conditions or cost of transportation may from time to time require, shall not be limited or in any manner affected by the provisions of any Act of the Parliament of Canada, whether general in application or special and relating only to any specific railway or railways, and the Board shall not excuse any charge of unjust discrimination, whether practised against shippers, consignees, or localities, or of undue or unreasonable preference, on the ground that such discrimination or preference is justified or required by any agreement made or entered into by the company: Provided that this subsection shall remain in force only during the period of three years from and after the date of the passing of this Act."

(Statutes of Canada (1919) Chapter 68, Section 325, Subsection 5).

This amendment permitted the Board to fix freight rates free from the restriction of the Crow's Nest agreement for a period of three years, or until July 6, 1922, and all rates were increased under the Board's judgment in the 40% Case ((1920) 26 C.R.C. 130). The increase in Eastern Canada was 40% until December 31, 1920, and thereafter 35%, and 35% in Western Canada until December 31, 1920, and thereafter 30%. These increases applied to the rates on grain and grain products from points in Western Canada to the Lakehead as well as on the westbound commodities covered by the Crow's Nest agreement. A general reduction in freight rates of approximately 10% effective December 1, 1921, which applied to the rates on grain and grain products and to the westbound commodities covered by the Crow's Nest Pass agreement was ordered by the Board in the 10% Reduction Case ((1921) 27 C.R.C. 131).

As Section 325 (5) was due to expire on July 6, 1922, Parliament enacted a further amendment by Statutes of Canada (1922) Chapter 41, which provided that Section 325 (5) should remain in effect with respect to westbound commodities until July 6, 1923, and

could be continued in force for a further period of one year by order of the Governor-in-Council. However, the subsection was allowed to expire with respect to rates on grain to the Lakehead on and from July 6, 1922, which restored the provisions of the 'Crow's Nest Pass agreement with respect to these rates.

The Crow's Nest agreement basis of rates on grain and grain products was re-established on July 6, 1922, from shipping points on the Canadian Pacific at the time of the signing of the agreement. From stations not on Canadian Pacific at the time of the signing of the agreement, the railways re-established rates which were effective prior to March 15, 1918.

The suspension of the Crow's Nest agreement rates on west-bound commodities was continued by the Government to July 6, 1924, after which date the rates on these commodities were restored to the level set out in the Crow's Nest agreement.

In filing its tariffs to comply with the agreement, the railways restricted the reduced rates to movements from and to stations which were on the Canadian Pacific in 1897. This led to many complaints to the Board of Railway Commissioners and the Board disallowed the tariffs which restored the Crow's Nest agreement level of rates on the westbound commodities (Re Crow's Nest Pass Rates (1924) 29 C.R.C. 238). The railways acting on this order cancelled the Crow's Nest rates on the westbound commodities. However, this action was stayed by Order-in-Council P.C. 2220 dated December 25, 1924, disallowing the Board's order. Meantime an appeal had been taken by the Prairie Provinces to the Supreme Court of Canada (Governments of Alberta, Saskatchewan and Manitoba v. Canadian Pacific Railway Company (1925) S.C.R. 155) and that court held that the Board was bound by the Crow's Nest Pass Act and agreement, but that under the agreement Canadian Pacific was obliged only to quote the Crow's Nest level of rates from shipping points on its main line and branches as they existed in 1897. As a result of the findings interpreting the Crow's Nest agreement,

Parliament then enacted what are now Sections 328 (5), 328 (6) and 328 (7).

By Order-in-Council P.C. 886 dated June 5, 1925, the Board of Railway Commissioners was directed to make a full and complete investigation into the rate structure of the railways. The Commission will recall that rates on grain and grain products from branch line points had been on a higher basis than from main line points. As a part of its judgment on the general investigation, the Board, acting under the new legislation ruled that rates on grain to the Lakehead both from branch line stations which were in existence at the time of the Crow's Nest agreement and stations added after that time were to be on the same mile for mile basis as the rates from stations in existence on the main line of Canadian Pacific at the time of the agreement. In addition, by General Order 448, dated August 26, 1927, the Board directed that the rates on grain and grain products moving for export to British Columbia ports should be on the same basis as grain and grain products moving for export to the Lakehead, but including a constructive mileage factor on Canadian Pacific. These rates and the reduced rates from branch line points came into effect on September 12, 1927, on which date the full effect of the 1925 legislation had been carried out. From 1927, rates on grain and grain products from all points on all railways in Western Canada to all export positions have been on the level fixed by the Crow's Nest Pass agreement.

LEGAL EFFECT OF 1925 LEGISLATION

When Canadian Pacific was incorporated in 1881, the general Railway Act then in force, "The Consolidated Railway Act, 1879", permitted railway companies freedom to fix tolls so long as not more than 15% profit on the capital expended in the construction of the railway was earned. If the tolls produced more than 15%, Parliament was given authority to reduce them.

"The Consolidated Railway Act, 1879" was incorporated with the Canadian Pacific charter, subject to certain changes. One of these related to the right of Parliament to interfere with tolls fixed by Canadian Pacific. In the case of Canadian Pacific, Parliament was given the right to reduce tolls where these produced more than 10% profit on the capital expended in the construction of the railway instead of 15%, as in the case of other railways. When the general Railway Act was revised in 1888, the provision respecting the non-interference with tolls up to 15% profit applicable to railways other than Canadian Pacific was dropped, but the provision in the Canadian Pacific charter was preserved. This was the situation when the Crow's Nest Pass Act was passed.

It is important to observe the method used by Parliament in providing for the subsidy for the construction of the Crow's Nest Pass Railway. This was done by an "Act to authorize a subsidy for a railway through the Crow's Nest Pass", Statutes of Canada (1897), Chapter 5. Section 1 of that Act states that the Governor-in-Council may grant Canadian Pacific a subsidy towards the construction of the line from Lethbridge to Nelson, provided an agreement is made between the Government and the Company containing covenants which are set out in full in Section 1 of the statute. The relevant conditions which were to be accepted by Canadian Pacific are as follows:

1. That the local rates and tolls on the new line and any other line operated by the Company south of its main line in British Columbia, together with the rates and tolls to and from the new line and the rest of the Company's system in Canada, should be first approved by the Governor-in-Council or by a Railway Commission if and when the Commission is established, such rates to be thereafter subject to revision and control in the same manner (Section 1 (c)).
2. That there should be a reduction in the rates on certain westbound commodities (Section 1 (d)).
3. That there should be a reduction in the rates on grain and flour from all points on the Company's main line, branches or

connections west of Fort William to Fort William and Port Arthur and all points east of 3¢ per 100 pounds (Section 1 (e)).

4. That the Railway Committee of the Privy Council may grant running powers to any other railway company over the new line and all lines then or thereafter operated by the Company south of its main line in British Columbia (Section 1 (f)).

5. That if, by constructing the new line, the Company became entitled to a land subsidy from the Government of British Columbia, such lands including all minerals and timber but not including coal-bearing lands should be disposed of under regulations and prices fixed by the Governor-in-Council (Section 1 (h)).

6. That if, by constructing the new line, the Company became entitled to any coal-bearing lands, it would convey 50,000 acres to the Government (Section 1 (i)).

When the Crow's Nest Pass Act was subsequently before the Supreme Court in 1925 (Governments of Alberta, Saskatchewan and Manitoba v. Canadian Pacific Railway Company (1925) S.C.R. 155 at page 165), Anglin C.J.C., who delivered the judgment of the majority, described the method adopted by Parliament in the 1897 statute as follows:

"Parliament in effect said: If you, the Canadian Pacific Railway Company, will assent to the proposed modification of a provision of your statutory contract of 1881 and will forgo pro tanto the control of rates which it gives you, we will grant you a subsidy on accepting which you will become bound to carry out the terms on which it is granted. That was, in substance and effect, granting a subsidy and imposing by statute the terms on which it was granted."

In other words, it took the written consent of Canadian Pacific to effectuate the proposal.

The agreement, when executed on September 6, 1897, followed the exact language of the Act with respect to the proposal offered by Parliament (see Exhibit 45, appendix "B"). Thus the agreement,

like any other written agreement, is operative only within its terms.

As already indicated, the rates so established controlled the maximum on certain shipments between certain points until 1918 when increases on grain and grain products and the westbound commodities were permitted under the War Measures Act. Then in 1919 Section 325 (5) was added to the Railway Act, which in effect gave the Board jurisdiction over all rates unlimited by any Act of the Parliament of Canada, thereby permitting the Board to approve increases in grain rates and also the rates on westbound commodities. It continued in force until 1922 with respect to grain rates, and until 1924 with respect to other rates including the rates on the westbound commodities mentioned in the agreement of 1897.

Following the expiry of Section 325 (5) in full in 1924, Canadian Pacific filed new tariffs limiting the application of the Crow's Nest rates on the westbound commodities from and to points on Canadian Pacific Railway as they existed in 1897. This precipitated the case before the Board in 1924, the appeal to the Supreme Court in 1925 referred to before, and the legislation passed in 1925 which put an end to the Crow's Nest Pass agreement and substituted fixed statutory control of the rate level on grain to export positions in Western Canada.

It is important to note that the procedure adopted by Parliament in 1925 was distinctly different from that adopted in 1897. In 1897 Parliament offered Canadian Pacific a subsidy if the Company entered into a written agreement under which it agreed to be bound by specified terms. In 1925 Parliament passed a law to which Canadian Pacific was subject along with all others.

In 1925 Parliament did not offer to Canadian Pacific a proposition subject to conditions to be accepted by it by written agreement. By no process of reasoning or law can the legislation of 1925 be described as an amendment to the agreement of September 6, 1897, because Canadian Pacific was not, nor was it given the opportunity

to be, a party to an amending agreement.

The 1925 legislation effected a repeal of the agreement of 1897 as between Canadian Pacific and the Government. After a careful review of this aspect of the matter, the Turgeon Commission found:

"The fact is that the real intension of the amendment of Section 325 of the Railway Act passed in 1925, and already quoted, was to put an end to the Agreement of 1897 as between the parties to it (the Government and the Canadian Pacific Railway Company) and to prescribe instead a statutory stabilization of certain freight rates binding on all railways, in order to meet a condition then existing, a condition which was foreseen in 1897 and which had come into being during the many years the contract was in force and very largely through the operation of that contract. It seems clear that the reference made to the Agreement of 1897 in the legislation of 1925, and still in the statute, was intended merely to be descriptive of the rates which Parliament was prescribing for use thereafter on all lines of all railways in the area mentioned." (Turgeon Report p. 245).

Parliament took this action because the rates stipulated by the Crow's Nest Pass agreement had created a completely unworkable situation. Recognition that the 1925 legislation put an end to the Crow's Nest Pass agreement can be seen from Professor W.L. Morton's opinion that a strict application of the Crow's Nest Pass rates would have caused "a political explosion in the West" (Vol. 30 - 4451).

Some have suggested that Canadian Pacific received "benefits" under the 1897 agreement which it is still enjoying, and the suggestion is made that these "benefits" must be taken into account in any consideration of the rates on grain.

The "benefits" are alleged to be:

1. That it acquired a monopoly in Southern Alberta.
2. That it acquired its interest in Consolidated Mining and Smelting Company.
3. That it received a large subsidy.

With respect to the monopoly "benefit", it is sufficient to point to the fact that, under the 1897 agreement, the Government reserved the right to grant running powers on the new line and indeed, the Company's entire system in Southern British Columbia, to any other railway company. This certainly precluded any monopoly. This was pointed out by Mr. H.C. Reid, who said:

"At the time of negotiations leading up to Chapter 5 of 1897, and in the course of the discussion in the House of Commons reference was made to the question of monopoly. This clause was included to ensure that Canadian Pacific was not granted a monopoly position. Moreover, any railway company that wished to build in southeastern British Columbia would have been able to secure a charter. Indeed, reference to the legislation shows that charters for this purpose were granted subsequent to 1897."
(Vol. 14 - 1916/7).

The evidence of Mr. H.C. Reid was conclusive that Canadian Pacific did not acquire its interest in Consolidated Mining and Smelting under the terms of the Crow's Nest Pass agreement (Vol. 14 - 1936). Mr. Reid said:

"On more than one occasion it has been said that the interest of Canadian Pacific in Consolidated Mining and Smelting Company of Canada, Limited, arose from the Crow's Nest Agreement. This is absolutely wrong. The interest of Canadian Pacific in Consolidated Mining and Smelting was in no way connected with the construction of the Crow's Nest line. Canadian Pacific's interest in Consolidated Mining and Smelting had its beginning as a speculative investment acquired originally by purchase and added to by purchase of stock from time to time in later years."
(Vol. 14 - 1936).

Dr. Britnell for Saskatchewan suggested that the investment in Smelters was there for the taking as a consequence of the public assistance given towards the building of the railway line (Volume 87 - 15031). In the first place, it should be noted that the method of granting subsidies in aid of railway construction was that followed in the early railway construction in Canada. In other words, there is nothing unusual in the fact that a subsidy was given for the construction of the line. Secondly, to say that Canadian Pacific was enabled to acquire an interest in Consolidated Mining and Smelting because of the 1897 agreement is the equivalent of saying that if, when Canadian

Pacific constructed its main line through Sudbury, it had invested in shares of International Nickel, then the dividends from that company should now be taken into account in fixing freight rates. Such a suggestion is manifestly absurd. There is no connection whatsoever between the dividends Canadian Pacific now receives from Consolidated Mining and Smelting and the Crow's Nest Pass agreement.

Canadian Pacific received a cash subsidy of \$3,404,720 (Exhibit 54, line 7) and a land grant sold for a net amount of \$1,834,498 (Exhibit 56, line 57). The cash subsidy represents approximately one-third of the cost of construction of the Crow's Nest line. Moreover, it should not be overlooked that the Government received from Canadian Pacific 50,000 acres of coal-bearing lands. Dr. W.L. Morton, called as a witness by the Province of Manitoba, agreed that the cash subsidy was not out of keeping with what was the usual aid for matters of that kind at the time, and further, that that much cash and land was sometimes given without any further obligation on the railway but to build the line (Volume 30 - 4447). Clearly, the Crow's Nest subsidy cannot be considered as either large or providing an untoward or unusual benefit to Canadian Pacific. What was unusual were the obligations Canadian Pacific was required to assume.

There have been suggestions that the land and cash received by Canadian Pacific for the obligations it assumed under its original contract of 1880 must be considered in dealing with this issue. The contract dealing with the construction of Canadian Pacific is a separate transaction and has nothing to do with the grain rate issue.

JUST AND REASONABLE LEVEL OF RATES

The Canadian Pacific submission is that a just and reasonable level of rates for grain moving to export positions in Western Canada should be determined by normal rate making procedures and placing the rates in their proper position in the rate structure. The principal witness for Canadian Pacific on the proper level of the statutory grain rates was Mr. J.M. Roberts, General Traffic Manager.

The evidence on these rates should be considered in the light of the principles of railway rate making described by Mr. Roberts and found in Volume 23 - 3261 to 3298 and 3362 to 3377. The evidence with respect to the level of rates which would be just and reasonable for the movement of grain to export positions in Western Canada will be found beginning in Volume 24 - 3379.

Mr. Roberts pointed out that as rates on statutory grain had remained fixed since 1927 and are at the level established in 1899 or lower, these rates had not retained their proper place in the freight rate structure (Vol. 24 - 3379). In determining a level of just and reasonable rates, Mr. Roberts' basic approach was to establish a level of rates which would put this grain traffic in its proper place in the freight rate structure (Vol. 24 - 3380). To do this, Mr. Roberts began with the fact that grain and its products have always been rated at 8th class (now Column 30) in the Canadian Freight Classification. Mr. Roberts then examined the relationship between the Crow's Nest Pass rates in effect on September 1, 1899, with the then existing 8th class rates for similar distances and found the grain rates to be some 40% of the 1899 8th class rates (Vol. 24 - 3384 and Exhibit 83). A comparison of the Crow's Nest Pass rates with the 8th class rate in effect in 1927 was then made and it was found that the Crow's Nest Pass rates were some 32% of the 1927 8th class rate (Vol. 24 - 3393 and Exhibit 84). The Commission will remember that in 1927 as a result of the 1925 legislation, the statutory rates on grain, whether originating on branch lines or on main lines, together with rates on grain moving to Pacific Coast ports for export were fixed on the basis of the 1899 main line level of rates applicable to grain moving to the Lakehead.

The application of either 40% or 32% to the present Column 30 rate for a number of representative shipping points in Western Canada showed differing percentages of disparity (Vol. 24 - 3398 and Exhibits 83 and 84). Mr. Roberts explained that the progression of mileage blocks under the statutory grain rate scale is

not regular and so a simple application of either the 40% relationship or the 32% relationship to the present Column 30 rate would increase the rate unevenly as between various shipping points (Vol. 24 - 3400/01). In view of the irregularities in the statutory grain scale, Mr. Roberts considered the construction of an entirely new scale with a smooth progression, but he discarded this theoretical approach on the ground that it would have disturbed in some degree long-established groupings (Vol. 24 - 3398).

In order to avoid disrupting the long-established groupings, Mr. Roberts then turned to a consideration of applying an increase to all rates based on an increase to the rate at a key point. This involved the selection of a key point, and after considering the merits of Winnipeg as against Regina, he selected Winnipeg as it was the key point when the export grain rates were first established at the time of the Crow's Nest Pass agreement (Vol. 24 - 3407). Then, using the 1927 relationship of the Crow's Nest Pass rates to 8th class at Winnipeg, namely 31.1%, (see Exhibit 84, line 1) and applying this percentage against the existing Column 30 rate on grain from Winnipeg to Fort William, Mr. Roberts got a rate of 28¢ per 100 pounds or an increase of 100% over the present statutory rate from Winnipeg. He then tested the application of a 100% increase in rates from Regina to the Lakehead and from Calgary to the Pacific Coast ports and concluded that this gave a just and reasonable level (Vol. 24 - 3405). The 1927 relationship was chosen in preference to the 1899 relationship because it reflected the year in which the present rates became effective as statutory rates applicable to the entire movement (Vol. 24 - 3401).

Mr. C.L. McCoy, Assistant General Freight Traffic Manager for Canadian National, gave evidence as to a proper level of rates for statutory grain traffic on behalf of Canadian National. He made a comparison for the years 1951 to 1958 of the average haul per ton and revenue per ton mile for (a) all traffic excluding grain and grain products; and, (b) grain and grain products and pointed out:

"It is interesting to note that while the average lengths of haul have not changed materially over the years, the revenue per ton-mile relationship of the grain and non-grain traffic has changed from a ratio of one to three to one to four, thus reflecting the failure on the part of the grain traffic to absorb increased operating costs."
(Vol. 21 - 3024/5).

Mr. McCoy adopted a 1927 relationship of grain rates to class rather than the 1899 relationship (Vol. 21 - 3039). He said that an increase of 123% in revenue would be required to cover Canadian National's total costs. He summed up his evidence as follows:

"Consequently, we have submitted the information on rates past and presently applicable in Canada and in the United States along with an indication of the level that established rate-making principles would suggest, in order to assist the Commission to determine what would be a just and reasonable level of compensation."
(Vol. 22 - 3072/3).

Describing Mr. Roberts' evidence as to a proper level of rates for export grain as a "rate comparison", which is far from being a complete description, Mr. W. B. Saunders questioned the method of using a percentage of first class "as a yardstick to determine what a 'normal' rate would be". (Vol. 117 - 19453). It should be pointed out that historical relationships to class rating and level have been maintained on most commodities except where competitive factors are controlling. The important point, as Mr. J.M. Roberts' evidence shows, is that the proposed level developed through relationships, was tested against a number of factors including cost.

It is to be noted that Mr. Saunders, in discussing the elements to be considered in determining the just and reasonable level of a rate, supported the principle of rate relationship as well as cost. Mr. Saunders said that one of the elements in determining a just and reasonable rate is to look at the rate under study relative to the rate for another movement of that commodity or a related commodity (Vol. 127 - 22016).

Mr. Roberts' evidence described in detail the tests he applied (Vol. 24 - 3407 to 3435). It will be sufficient here to

indicate the general nature of these tests:

(a) The level of rates was tested against the cost of moving the statutory grain (Vol. 24 - 3408).

(b) The revenue per ton mile, which would be realized at a just and reasonable level of rate for statutory grain traffic was tested by a comparison of this figure with the revenue per ton mile of all other traffic for 1958, excluding statutory grain traffic (Vol. 24 - 3413 to 3416).

(c) The proposed level of rates was tested with the level of rates on domestic grain within Western Canada (Vol. 24 - 3417).

(d) As the proposed level of rates could not be tested with other traffic in Canada having similar characteristics because there is no other comparable commodity, the proposed level of rates was tested against rates for the movement of grain and grain products in contiguous territory in the United States (Vol. 24 - 3422 and Exhibit 47) and in particular, against the percentage changes of the U.S. rates since 1927 (Vol. 24 - 3426 and Exhibit 85). Exhibit 85 shows that the percentage increases in the U.S. rates to Duluth, Minn. and Seattle, Washington, ranged from 104.2% to 119%.

Based on his experience, Mr. Roberts' appraisal was that a just and reasonable rate level for the movement of grain to export positions in Western Canada would be a rate which would produce an average revenue of 1¢ per ton mile - that is double the statutory rate level. The various tests, including cost of moving the traffic were used by him in his appraisal.

Mr. Edsforth agreed with the proposed level reached by

Mr. Roberts. He said:

"Very frankly, on a just and reasonable rate level, that rate in Western Canada should be at the level, as we say, averaging about 1¢ a ton mile, and that is what the shipper should pay."
(Vol. 119 - 19725).

REVENUES AND COSTS OF MOVING GRAIN TO
EXPORT POSITIONS IN WESTERN CANADA

Basic to a just and reasonable rate level for the movement of grain to export positions in Western Canada is the determination of the long term variable cost of handling the traffic - such costs set the floor. The importance of the traffic from a volume standpoint also makes it necessary to determine the reasonable proportion of constant costs attributable to the traffic. Segregation of the variable costs between those variable over selected periods of time cannot be made with reliability. As the statutory grain movement will continue for the foreseeable future, development of costs on a short-term basis are meaningless. This principle was accepted by Mr. Banks.

"Mr. Sinclair: My point is this: in cost determination for the movement of a body of traffic, that is a representative volume over time that does not vary too greatly, it would be meaningless, I suggest to you, to look at short run costs to try to determine what would be a just and reasonable level of compensation.

Mr. Banks: Are you referring to Crowsnest grain, Mr. Sinclair?

Mr. Sinclair: I will take iron ore from the Mesabi Range to Duluth, if you like, or steel products from Pittsburg to Chicago or onions from Michigan to Boston.

Mr. Banks: I would agree with your general position subject to review in each situation that long term variable cost is the proper cost to be used in setting durable traffic movements whose flow will continue into the traffic future throughout the year."
(Vol. 130 - 22295)

Major changes are not foreseen in the way the grain traffic can be transported because the present method provides the most economic and practical method of moving the traffic from country origins to export positions.

The railways developed and placed before this Commission what is probably the most intensive railway cost study which has ever been done. The railways could have accepted methods and procedures which have been used by the Interstate Commerce Commission in the United States. They decided that because of the better data available to them and the application of more advanced techniques, it was possible to introduce refinements. In their study, the railways have used the best techniques and analyses which are available. Techniques alone are not enough, however, and consequently they were used in conjunction with a knowledge of railway operations and the factors which influence the behaviour of costs.

Mr. Banks, the chief spokesman for the cost presentation of Manitoba/Alberta, stated:

" . . . in my opinion, the cost analyst has got to work with the operating and maintenance people on the railroad if his results are to be meaningful".
(Vol. 130 - 22299).

Canadian Pacific introduced to the Commission the members of its staff and consultants who were responsible for its grain cost study. The Canadian Pacific staff included W. J. Stenason, Director of Economic Research, who directed the study; P. A. Nepveu, Assistant to Comptroller, Special Studies; L. R. Smith, Assistant to the President, a specialist in railway operations; J. M. Bentham, Engineer of Track, a specialist in Road Maintenance; H. W. Hayward, Works Manager of Angus Shops, a specialist in Equipment Maintenance; H. G. McGinn, Assistant Superintendent, Winnipeg Terminals, a yard specialist; and members of the Department of Research who are engaged in cost and statistical analysis on a full time basis.

The railways retained as consultants Dr. Ford K. Edwards who is acknowledged as a leader in railway cost finding in the United States and certainly one having substantial experience; Mr. C. W. Smith, an outstanding authority in public utility finance and accounting, who has appeared in numerous cases on behalf of tribunals as well as parties; and Dr. William C. Hood, the railways' statistical consultant, who is possibly Canada's outstanding econometrician.

The cost study of Canadian Pacific in detail has been before this Commission, Manitoba/Alberta, and the Grain Handling Organizations and other interested parties for some 15 months. Numerous conferences and discussions have been held between the various consultants, and voluminous correspondence was exchanged.

The co-operation given to interested parties by the railways in making available detailed information was indicated by Mr. MacKimmie, Counsel for the Grain Handling Organizations, at Vol. 129 - 22269.

"... and before leaving I would, on behalf of Mr. Saunders and his staff as well as the organizations that I represent, like to thank railway counsel and their Mr. Stenason and Mr. Bandeen for the co-operation we have had ... While we had our quarrels, we are completely satisfied with the treatment we received."

Canadian Pacific welcomed suggestions to improve its study. The suggestions put forward by consultants of the various parties which improved the study were incorporated at Vol. 66 - 11654.

Manitoba/Alberta and the Grain Handling Organizations in later presentations advanced suggestions for additional refinements. These were included in the substantive cost case of Manitoba/Alberta and in the critique put forward by the Grain Handling Organizations. The substantive cost presentation of Manitoba/Alberta grossly understates the work required and costs involved in the movement of grain to export positions in Western Canada. Substantial errors, some of which have been acknowledged by Manitoba/Alberta, have been made in their study without which their unrealistically low figure for variable cost could not have been arrived at.

The Grain Handling Organizations did not develop the cost of moving grain. It is apparent any study they could support would prove that statutory grain traffic was non-compensatory. Rather, they attempted to cast some measure of indefiniteness about railway costing. This is in spite of the fact that the consultant of the Grain Handling Organizations admitted under cross-examination that studies less precise and refined than that advanced by Canadian Pacific before this Commission had been used and relied upon in rate decisions involving substantial sums. Moreover, Mr. Saunders admitted he had used average instead of refined data and was quite confident in presenting the results in asking that the I.C.C. take action based on the studies he had made (Vol. 127 - 22007/8). The criticisms and suggested refinements advanced by the Grain Handling Organizations were shown in the rebuttal evidence of Canadian Pacific not to warrant a change in the cost study.

Dr. M. J. Ulmer, Mr. G. H. Borts, and Mr. R. L. Banks appeared before the Commission on behalf of the Provinces of Manitoba and Alberta.

The year 1958 was used in the cost studies of the railways with adjustments to bring both revenues and expenses to the 1958 year end level. A comparison of the volume of grain and grain products handled in Western Canada by the railways in 1958, with the average of the 10 years, 1949 through 1958, showed that 1958 was a representative years. This has not been challenged.

Costing is not new to Canadian Pacific. In common with other railways, Canadian Pacific has used cost finding in pricing and for control purposes for many years. The costing methods placed before this Commission in the Crow's Nest Cost Study have been used by Canadian Pacific for some time in studies for management, as well as in applications before the Board of Transport Commissioners. Improvements in methods have been developed over the years and Canadian Pacific has incorporated these improved methods in developing the cost of moving grain to export positions in Western Canada.

Mr. Saunders (Vol. 117 - 19463) said that the Canadian "grain study is an important contribution to the art of railroad cost finding". Dr. Edwards (Vol. 74 - 13021) stated that the grain cost study "ranks very high near the tops, or maybe at the tops, of all studies made".

Mr. Saunders assessed the studies this way:

"Mr. Sinclair: But in making these special studies in the cases you have been associated with and in the cases that you know like the Southern Governors' Grain Case and the intensive cost study you did, you did not make nearly as many special studies or introduce the tracing to the degree that was done by the railways in this grain case study which is before this Commission.

Mr. Saunders: No sir. I have a very high opinion of both studies as techniques and as an advance in the art and so forth. I have never suggested that they had not done fine work."
(Vol. 127 - 22010)

Dr. Ford K. Edwards expressed the view that the "grain movement uniquely lends itself to costing". He explained that although grain is gathered over a wide area, its movement from the various country origins to a limited number of export positions becomes channelled over well-defined routes and through terminals (Vol. 19 - 2648).

Mr. R. L. Banks said that "the realistic objective of railway costing is to establish a reasonable identification between traffic and costs. Grain lends itself to this objective. (Vol. 116 - 19261/2).

It would seem appropriate to now summarize the principles of cost finding as they have been placed before this Commission and to review in some detail the methods used by Canadian Pacific, the criticisms advanced, and the deficiencies in such criticisms.

Revenues

Revenues from the movement of grain direct to export positions at Fort William and Vancouver were readily available from the waybills. The revenues from grain and grain products moving under the stop-off privilege were developed through analysis of separate waybills covering movements to and from the mills.

No one has challenged the revenues developed by Canadian Pacific for the movement of grain to export positions in Western Canada except in regard to the inclusion of milling-in transit revenues and expenses.

A study of the revenues and expenses of grain to export positions in Western Canada must include all revenues earned and expenses incurred in moving the traffic from origin to export positions. Revenues from milling-in-transit and associated costs were therefore included in the Canadian Pacific study, as milling-in-transit is an integral part of the movement of grain to export positions in Western Canada (Vol. 132 - 22505).

Principles of Costing

Railway costs are divided into two categories: variable and constant. Variable costs are those which can be traced to changes in traffic volume, and in addition include solely related costs. Constant costs, on the other hand, are those which have not been traced to changes in traffic volume. However, they are no less real than the variable cost, and must be recovered from revenues.

Variable Costs

The variable costs of the study traffic are those which are present because of the movement of the traffic under study and are traceable to that traffic. Changes in the volume of traffic handled affect train operations and consequently fuel and crew wages immediately. Similarly, such items as loss and damage and grain doors, vary directly with the traffic under study. Development of these costs is easily secured through use of direct costing methods.

In other cases, the time required for adjustment in expenses to changes in traffic volume is somewhat greater. For example, adjustment of investment in freight cars to changes in traffic volume can be achieved in a relatively short period because of the large annual turnover of investment in freight cars. Road property investment, on the other hand, requires a somewhat longer period of adjustment to changes in traffic volume.

Where cost is incurred jointly, the technique used to determine variability of the expense with each of the appropriate output units is multiple regression analysis. The consultants for Manitoba/Alberta and the Grain Handling Organizations have recognized and accepted multiple regression analysis as the proper technique for separating joint railway costs.

The position of Mr. Saunders, on behalf of the Grain Handling Organizations:

"Mr. Sinclair: I think you have indicated to the Commission this morning that you much prefer and you think that the work done by the railways here in tracing by regression analysis is to be preferred over that method.

Mr. Saunders: The technique of regression analysis is to be preferred.

Mr. Sinclair: And that the work done here by these railways -- would you rather have had the type of study which you did -- Form A -- than the work that has been done?

Mr. Saunders: No, I think this approach is better."
(Vol. 128 - 22065)

The position of Mr. Banks on behalf of Manitoba/Alberta:

"Mr. Sinclair: But notwithstanding these problems they present, Mr. Banks, we agree, that even with their failings they are a marked advance over the techniques of averaging and matters of that kind that had been used heretofore?

Mr. Banks: By that you mean multiple regression techniques?

Mr. Sinclair: Yes.

Mr. Banks: In the areas in which they have been applied in this proceeding, yes, sir."
(Vol. 130 - 22301)

Where the degree of variability has been established or where data for direct or regression analysis is not available, allocation is the method used. In the grain cost study, for example, "Traffic Expenses" were developed by the allocation method.

An important element of the variable cost of any category of traffic is the cost of maintenance and investment in the plant facilities which are solely related to the traffic involved. Dr. Edwards said:

"Any severable fixed plant facility becomes solely related to the traffic using such facility when such facility and its continuance is occasioned by the study traffic. In short, a branch line is solely related to the study traffic moving on such line when the revenues from the non-study traffic are insufficient to alone warrant the continued operation of the branch". (Vol. 19 - 2743/4)

He said further that the principle of charging the cost of such fixed plant facilities as a variable cost of handling the study traffic requiring such facilities had been adopted by the Interstate Commerce Commission cost staff as far back as 1941 (Vol. 74 - 13042).

Following the page reference just made, Mr. Mauro, Counsel for Manitoba, suggested to Dr. Edwards the concept of solely relatedness was the concept of Dr. Edwards and had not been accepted by the Interstate Commerce Commission and further that in the cases in which it had been advanced, it had been strongly opposed, including specific opposition from Mr. Gilbert Parr. At Vol. 74 - 13045, Dr. Edwards, in answer to Mr. Mauro, dealt with it in this way:

"Dr. Edwards: Well, Mr. Parr was, of course, second in charge of the Cost Section and assisted in their preparation of the case way back -- the 28,300 class rate case, wherein this principle was laid out and the inclusion of the branch lines in this concept was spelled out as well as in the coal and ore wharves. So we had no internal questions or problems in the cost section on that matter at that time."

It is significant that Manitoba/Alberta, although suggesting its validity has to be shown, included costs for solely related plant in their substantive cost case. The concept was not challenged by the Grain Handling Organizations.

Mr. Stenason explained that every branch line operated by Canadian Pacific in Western Canada was examined to determine whether or not that line would have been built or maintained were it not for the handling of grain or, in other words, whether or not it was solely related to the handling of grain. He fully described the three tests which were applied to each branch line: the economic test, the operating test, and the preponderance of traffic test. The study also included an examination of main line facilities in Western Canada, such as sidings, yard and elevator trackage, to determine those solely related to the movement of grain and grain products (Vol. 18 - 2559/2563).

Counsel for Manitoba during cross-examination of Dr. Edwards suggested that under the concept of solely-relatedness, the lines in a region might be treated as solely related to the traffic originating or terminating in that region. This suggestion was effectively answered by Dr. Edwards, who said that the concept

of solely-relatedness applies only to severable facilities, that is, facilities that could be detached from the system without destroying the system (Vol. 74 - 13081). Counsel for Alberta attempted to develop the position that the capital invested in solely related branch lines has little alternate use other than salvage or relay value of the track. He attempted to establish that it was incorrect to include in the size related costs for solely related lines the cost of money on the investment in these lines. Counsel for Alberta failed to distinguish between the concept of "sunk investment" in abandonment decisions and the concept of cost of money on investment in solely related lines which must be renewed to accommodate the requirements for the continuing movement of a particular category of traffic. This distinction was made clear by Mr. Stenason in cross-examination (Vol. 68 - 12127/31).

Mr. Banks (Vol. 130 - 22308) referred to the recent examiner's report of the Interstate Commerce Commission in the Transcontinental Divisions case. The examiner's report stated that -

"We are unable to accept the theory that a proportion of 50% of such traffic on a branch indicates such a degree of dependence thereon as to justify the 100% assignment of costs as the Defendants contend."

The circumstances of the Transcontinental Divisions case were markedly different from those which confront this Commission in regard to solely related grain lines. Canadian Pacific did not use a proportion of 50% traffic in determining whether a line was solely related. The weighted average percent of grain net ton miles to total net ton miles originating and terminating on the solely related lines was 82.4 percent, and on only a few lines was the percentage of grain to total traffic originating and terminating on the line less than 70 percent. Furthermore, Canadian Pacific did not charge 100 % of the costs of the line to the study traffic. Rather, it allowed a net

revenue credit from the movement of the non-grain traffic originating and terminating on the solely related lines. Therefore, the remarks by the examiner in the Transcontinental Divisions case do not apply to the use made by Canadian Pacific of the solely related concept.

Mr. Saunders stated (Vol. 117 - 19482) that it was found that trackage treated as wholly charged to grain was being taken up while grain traffic is still moving. He suggested because of this excess capacity was being charged to grain. Canadian Pacific has shown (Vol. 132 - 22501/2) that Mr. Saunders reached this conclusion because certain passing and yard trackage on solely related lines were being removed while other tracks were being lengthened. This is part of minor adjustments to plant which are continually made by operating officers of the company to meet changing requirements of operations, operating procedures and traffic pattern. It does not prove excess capacity.

In summary, the solely related concept has been accepted by the I.C.C. cost section. The Grain Handling Organizations have not objected to its use. Manitoba/Alberta used the concept in developing their figure. Comments made with reference to use of the solely related concept by examiners in the Transcontinental Divisions case in the United States are not applicable to use of the concept by Canadian Pacific.

Constant Cost

The rate charged for any segment of traffic must cover at least the variable cost and something more if a burden is not to be placed on other traffic or on the railways, or both. Cross-subsidization is involved if the revenues received from a segment of traffic do not meet a proper proportion of constant costs. This can become a burden when the traffic under consideration constitutes a large proportion of total traffic.

Constant costs represent the difference between the total costs and the total variable cost of freight and passenger traffic. Mr. Stenason said that the passenger deficit had not been taken into account in the development of constant cost. He explained that his treatment of the passenger deficit was in accordance with Canadian Pacific's position that the problem of matching revenue with the variable expense of operating passenger trains was a managerial one (Vol. 18 - 2579). The position of Canadian Pacific with regard to passenger was made clear by Mr. Emerson when he appeared before this Commission (Vol. 109 - 18252/3).

In the Canadian Pacific study, constant costs were allocated to grain on the basis of the proportion that the variable cost of grain bears to the total variable cost of all freight traffic on the system. Dr. Edwards pointed out that the constant costs allocated to grain were on a conservative basis, and showed that, if the Interstate Commerce Commission procedure of allocating constant costs on a ton and ton-mile basis, but without including any element of the passenger deficit, had been followed by Canadian Pacific, the constant costs chargeable to the study traffic would have been \$11.2 million more (Vol. 19 - 2759). Mr. Saunders stated under cross-examination at Vol. 127 - 22013, that in the Southern Governors' Grain Case he used a ton and ton-mile basis for apportionment of constant costs.

The consultants for Manitoba/Alberta and the Grain Handling Organizations attempted to confuse the issue with regard to the allocation of constant costs. Mr. Saunders has incorrectly stated the position of Canadian Pacific when he said that railroad management has taken the position that it cannot recover its costs from passenger train service because that service cannot bear the relevant costs if charged, and thus costs which normally would be assigned to passenger train service are automatically kept in the freight column and charged against any freight traffic

being studied (Vol. 117 - 19482). Mr. Emerson has made it clear that Canadian Pacific is essentially a freight road, that freight transportation was the fundamental purpose for its construction and passenger traffic was a by-product of the transportation plant. He then added that it is completely unrealistic in considering passenger train service on Canadian Pacific to look upon it either historically or currently, other than as traffic which is moved on an incremental basis and this, he said, has nothing to do with economics or what some people term incremental by necessity and not by fact (Vol. 109 - 18252/3).

Mr. Banks said he considered more valid the attachment of a share of constant costs to the passenger train service on the grounds that the costs of the two deficit traffics - passenger and grain - should be developed and computed in a uniform manner. The only analogy between passenger service and the movement of grain traffic is that in 1958 they were both in a deficit position. Otherwise, they are entirely different. Passenger service is a by-product of the railway plant and the passenger deficit is a managerial problem which, as demonstrated by Mr. Emerson's evidence, Canadian Pacific management has attacked in an aggressive manner and is determined to eliminate. Grain on Canadian Pacific is in an entirely different position than passenger train service. Grain constitutes over 42% of the revenue freight traffic handled by Canadian Pacific in Western Canada. It is basic to the plant. There are no alternative forms of transportation which can move grain at or near the proposed rate levels.

Mr. Banks, in his attempt to assign a portion of constant costs to passenger train service, preferred to ignore these differences. Neither Mr. Banks nor Mr. Saunders, however, took exception to the fact that a portion of the passenger deficit had not been allocated to the study traffic as is normally done by the Cost Section of the Interstate Commerce Commission.

The cost consultants for Manitoba/Alberta and the Grain Handling Organizations have said that allocation of constant cost to grain must be arbitrary. They did not, however, say that grain should not bear some portion of constant costs. Manitoba/Alberta, in their cost study, allocated a portion of constant cost to grain. As with the Grain Handling Organizations, Manitoba/Alberta felt that a portion of constant costs should be allocated to passenger train service before the allocation to grain is made. Canadian Pacific disagrees with this for the reasons discussed earlier. Neither Manitoba/Alberta nor the Grain Handling Organizations have taken into account the use by Canadian Pacific of the conservative percent of expense basis in allocating constant cost to grain service. If Canadian Pacific had used the I.C.C. method, the costs attributable to grain would have been some \$11,000,000 higher, as shown by Dr. Edwards (Vol. 10 - 2759).

Cost of Money

In the development of variable and constant cost of the study traffic, cost of money on investment required for movement of the study traffic was included. In the variable cost, cost of money was included on the net investment in equipment and the variable portion of net investment in road property and on the net investment in solely related facilities. In constant cost, cost of money was included on the constant portion of the net investment in road property. The net investment in Canadian Pacific railway property was determined by the Board of Transport Commissioners after an exhaustive study and examination of the records of the Company had been conducted over a period of several years by the financial advisers of the Board. The net investment in railway property of Canadian Pacific is maintained in accordance with the prescriptions contained in the Board's Uniform Classification of Accounts.

One of the considerations of the Board when the net investment in Canadian Pacific railway property was established

was the determination, within reasonable limits, as to whether or not the money had been prudently invested, and whether or not it represented outlays in respect of rail property used and useful in the enterprise (Rate Base-Rate of Return Board Judgment, February 15, 1954, p. 18).

Manitoba/Alberta accepted the net investment in rail property as used by Canadian Pacific in its cost study. Their financial adviser, Dr. M. J. Ulmer, in dealing with this aspect said:

"Mr. Sinclair: The net rail investment of Canadian Pacific is determined by the Board of Transport Commissioners and in accordance with that determination and the Classification prescribed by the Board, the net rail investment of Canadian Pacific at the end of 1959 was \$1,427,676,210.

Dr. Ulmer: Yes, sir.

Mr. Sinclair: You are not challenging this net investment in the rail of Canadian Pacific?

Dr. Ulmer: No, sir.

Mr. Sinclair: You agree, Dr. Ulmer, that the investment in the Canadian Pacific rail enterprise was made in the pursuit of legitimate business objectives by a reasonably prudent management?

Dr. Ulmer: Yes, sir."
(Vol. 117 - 19307/8).

Mr. C.W. Smith defined cost of capital, or what is sometimes termed cost of money, as ". . . a cost is expressed as a percentage rate on investment (and) measures the compensation required for the use of the capital" (Vol. 20 - 2806). Cost of money is applied on a gross basis, so that after income tax is paid on the equity portion of the cost of money, the amount necessary to compensate for use of capital will be available. Mr. Smith said that the cost of capital was just as much a cost as the cost of labour and that it must be paid if a company is to continue to attract capital. (Vol. 21 - 2965). Dr. Edwards' evidence was that the cost of servicing the investment in plant and equipment is no less real than any other cost (Vol. 19 - 2729).

The cost of capital for Canadian Pacific as developed by Mr. C. W. Smith included the historical cost of debt capital and preference stock, that is, what it actually was costing Canadian Pacific in 1958 to service its debt and preference stock. It also includes the cost of equity capital which Mr. C. W. Smith said is "... what is required to protect the financial integrity of the enterprise and thus permit it to attract such capital on reasonable terms and conditions" (Vol. 20 - 2807). Mr. C. W. Smith made no distinction between equity capital raised through the issuance of stock and that arising from reinvestment of earnings because every dollar invested is capital which must be compensated whether it came from the sale of stock or through re-invested earnings (Vol. 20 - 2876/7). That equity capital already invested must be treated fairly or you cannot get added increments of equity capital was agreed to by Mr. Saunders (Vol. 128 - 22167).

The principle that cost of money is a cost of moving the study traffic was not disputed. Counsel for Alberta said that it was perfectly proper and right that there should be put down in the variable cost something as an expense for the cost of capital (Vol. 73 - 12896). Mr. Frawley, however, attempted to equate cost of capital with rate of return and, for this purpose, referred to I.C.C. studies of rail carload cost scales where return on investment is used.

In the course of his cross-examination by Mr. Frawley, Dr. Edwards said that the I.C.C. used a rate equivalent to return on investment in burden studies but "It has never, to my knowledge, ever used a figure of 4 percent as representing the cost of money in any of its decisions" (Vol. 73 - 12899). In the I.C.C. burden studies, the rate is not used as the cost of capital but simply as a balancing item in order that total costs and burden equal total revenue.

Mr. W. B. Saunders, appearing for the Grain Handling Organizations, clearly took the position that you could not equate

cost of money and rate of return.

"Mr. Sinclair: So when you are looking for cost of money you do not expect earnings to indicate what the cost of money is?

Mr. Saunders: No, not at all, because I think they are two different things."
(Vol. 128 - 22160)

The fallacy of attempting to equate rate of return with cost of capital was illustrated by Dr. Edwards when he pointed out that under this concept if a carrier had no return on its investment, then the cost of capital would be zero (Vol. 72 - 12877). The result would, in fact, be the exact converse of reality, for obviously if a railroad had no return, it would be in a precarious financial position and its cost of capital, reflecting that condition, would necessarily be higher than for a railway in a profitable position.

Mr. Saunders fell into error when he suggested that the basis of the evidence of cost of money as put before the Commission by Mr. C. W. Smith, on behalf of Canadian Pacific, was based on a replacement of the entire plant. It appears that Mr. Saunders did not object to the 6 $\frac{1}{2}$ percent net as being the cost of capital to Canadian Pacific, but that he believed that there was part of the plant which would not be reproduced and therefore cost of money should not be charged on the net property investment as it exists.

It is important to realize that Mr. Saunders overlooks that the net investment upon which Canadian Pacific charged cost of capital was the net investment in the road and equipment as carried in the books of the Company. Much of this property was purchased at a price level very much lower than exists at the present time and a substantial percentage of the original investment has been deducted through the application of depreciation to arrive at the net investment figure. Canadian Pacific's position is that its plant does not contain any significant amount of property that will not be replaced. In any

event, if it was to be taken on the basis of replacement at current costs instead of as it is calculated, the investment would necessarily be very much higher.

Mr. Saunders in his presentation to the Commission, expressed the view that there was excess mileage (in railway transportation facilities. He suggested, but could not pinpoint, excess mileage being applicable to Canadian Pacific. Insofar as Canadian Pacific is concerned, Mr. Emerson (Vol. 109 - 18244) refuted the suggestion that there is significant excess mileage on Canadian Pacific.

The Commission will recall Mr. Emerson stating that there was substantial branch line mileage in Western Canada which would be "candidates for abandonment" unless grain revenues were on a proper basis. With revenues from the movement of statutory grain traffic on a reasonable basis, there are comparatively few miles of branch lines which would be uneconomic (Exhibit 144). Moreover, there are few branch lines where alternative forms of transport can provide the transportation requirements of grain as economically as rail.

In order to support their contention that Canadian Pacific is not entitled to include as cost of money more than it actually earns on its property investment, Counsel for Manitoba/Alberta called Dr. M. J. Ulmer. Dr. Ulmer, through a series of calculations, coincidentally arrived at the rate of 3.5 percent, which is exactly the same rate that Mr. Frawley as far back as December 1959 said was the maximum Canadian Pacific was entitled to earn on its property investment (Vol. 12 - 2605). It is interesting to note in this respect that Mr. Banks (Vol. 130 - 22393) stated that Dr. Ulmer had been engaged to determine the cost of money during the summer of 1960, some six months after Mr. Frawley's cost of money determination.

In determining the weight to be given to the cost of money evidence and what is cost of money to Canadian Pacific, the experience of Mr. C. W. Smith should be contrasted with that of Dr. M. J. Ulmer.

Mr. Smith was at one time a full-time staff member of the Federal Power Commission. At the peak of his work for that Commission he supervised a staff of 300 accountants, engineers and financial specialists, together with numerous associated clerks and stenographers. Mr. Smith has testified in more than 75 public utility proceedings, including cases before the Federal Power Commission, the Federal Communications Commission and the Securities and Exchange Commission, and also before numerous public service commissions throughout the United States. In all but three of these cases he testified on behalf of a regulatory commission. Eight of the cases in which he testified were passed upon by the Supreme Court of the United States. He has testified before the Board of Transport Commissioners in Canada and has been a consultant on financial matters to municipally-owned utilities and to privately-owned utilities, to large and small and medium gas companies and electric companies and other public utilities. (Vol. 20 - 2804/5).

Dr. Ulmer presently is the head of the Department of Economics of the American University. His career has been that of a lecturer, associate professor and professor in various universities and as a journalist, with some work for the United States government. His experience in determining cost of money in the regulatory field is shown by the following:

"Mr. Sinclair: Dr. Ulmer, have you ever been an adviser on financial matters to any regulatory tribunal?

Dr. Ulmer: Yes sir, I have.

Mr. Sinclair: It is not listed in your qualifications. What regulatory tribunal was that?

Dr. Ulmer: Well, I have -- you say 'regulatory', I have been an employee of the Department of Commerce concerned with financial matters.

"Mr. Sinclair: I said a regulatory tribunal and the Department of Commerce is not a regulatory tribunal, is it?

Dr. Ulmer: No sir, this was the phrase that skipped me.

Mr. Sinclair: I will put it again: have you ever been a financial adviser to any regulatory tribunal?

Dr. Ulmer: No, sir.

Mr. Sinclair: Have you ever been a financial adviser to a Canadian corporation in the public utility field or any other industrial field?

Dr. Ulmer: No, sir.

Mr. Sinclair: Have you ever given evidence on finance or the cost of capital on any proceedings?

Dr. Ulmer: I have given evidence for the General Service Administration and the I.C.C. in the United States. This did not bear precisely on this matter of cost of capital, it did bear on certain financial matters.

Mr. Sinclair: But not on cost of capital?

Dr. Ulmer: That is right.

Mr. Sinclair: And any proceedings other than this one, have you ever testified on permissive level of earnings?

Dr. Ulmer: No, sir."
(Vol. 117 - 19414/5)

In the light of Dr. Ulmer's experience, it is clear that he could not bring to the problem any practical experience. He admitted this:

"Mr. Sinclair: Have you applied theoretical concepts to the application of level of permissive earnings that you arrived at?

Dr. Ulmer: Yes, sir."
(Vol. 117 - 19374/5)

Dr. Ulmer completely confused cost of money and rate of return and the burden of his evidence was restricted to suggesting what permissive level of earnings should be considered for Canadian Pacific.

Dr. Ulmer in introducing his precis, said:

"The principal goal will be to present an objective determination of the permissive earnings of the company's rail operations."
(Vol. 115 - 19046)

In response to a question by Mr. Sinclair as to whether the Commission was receiving as an issue the question of permissive level of net rail income, the Chairman said:

"The Chairman: We are not invading the jurisdiction of the Board of Transport. We are not fixing permissive level."
(Vol. 115 - 19046)

Dr. Ulmer's calculations produced a patently ridiculous figure. He arrived at a figure for equity capital substantially below 4 percent. Any process which arrives at permissive earnings, much less cost of capital, of under 4 percent on equity is obviously wrong. What is being suggested by such a computation is that Canadian Pacific can secure equity capital at a figure substantially below the cost of debt money to the government of Canada under risk-free Canada Savings Bonds.

It is submitted that fundamental to the consideration of cost of money is the evidence of Mr. C. W. Smith, a man of practical experience in public utility finance, who stated before this Commission that unless the cost of capital computed by him is included in the cost of moving the study traffic and actually recovered from it, there will be an erosion of capital (Vol. 21 - 19046). The maintenance of railways in a financially sound position is the basic premise upon which the freight rate structure in Canada is established. If the rates on grain, which constitute from one-quarter to one-third of the transportation work done by Canadian Pacific, do not return the cost of capital on the plant used in performing that work, then it inevitably follows that there will be an erosion of capital, which is the exact antithesis of the premise upon which the freight rate structure is based.

Methods of Cost Study

Neither Mr. Saunders, on behalf of the Grain Handling Organizations, nor the consultants of Manitoba/Alberta disagreed with the costing principles used by Canadian Pacific in its cost study.

Disagreements, however, arose at the development of output units and unit variable costs.

Manitoba/Alberta attempted to show that grain was compensatory on a variable cost basis. This was achieved through reduction of certain of the important output units which measure the work required for movement of the study traffic, as well as by changes made to certain of the unit variable costs, including cost of money.

Canadian Pacific showed at Vol. 132 - 22503, the following explanation of differences in variable cost by category between those arrived at by Canadian Pacific and by Manitoba/Alberta:

<u>Category</u>	<u>Amount</u>
Difference due to lower train-miles	\$ 2,610,840
Difference due to lower switching-miles	1,033,837
Difference due to Manitoba/Alberta regression models	2,863,556
Difference due to lower car days and different method of treatment of certain accounts	5,495,467
Difference due to lower cost of money	<u>5,386,931</u>
	<u>\$17,390,631</u>

Canadian Pacific also showed that the basis used by Manitoba/Alberta in making these adjustments was erroneous. Indeed, the biggest changes arose from errors made by Manitoba/Alberta.

The Grain Handling Organizations did not arrive at a cost. Rather, they criticized four areas in the Canadian Pacific cost study. These criticisms were shown (Vol. 132) not to warrant a change in the Canadian Pacific cost of moving grain to export positions in Western Canada.

Grouping of Accounts

The expenses of Canadian railways are recorded in conformity with the Uniform Classification of Accounts prescribed by the Board

of Transport Commissioners. They are classified under general accounts, such as road maintenance, equipment maintenance, and transportation. Each general account is comprised of several primary accounts. For the purpose of the grain study, primary expense accounts having common characteristics were grouped. Road Property Depreciation which is recorded in a single primary account, was distributed to individual classes of property on the basis of property investment and included with the associated maintenance account. Equipment Depreciation is already distributed to individual classes of equipment in the accounts of Canadian Pacific. Depreciation is recorded in Canadian Pacific accounts on the basis of rates approved by the Board of Transport Commissioners.

There has been no dispute with regard to the grouping of accounts used in the study or the depreciation rates used.

Count of Basic Output Units

For the determination of the cost of the movement of grain and grain products at statutory rates, the amount of transportation work done by the railway in moving that traffic was measured by means of basic output units of transportation. The basic units used in the study are: revenue ton-miles, loaded and empty car miles, loaded and empty gross ton miles, loaded and empty car handlings, number of carloads, loaded and empty car days, train miles, locomotive miles and switching time.

Most of these basic output units, together with size variables, such as miles of track, were also used as explanatory variables to develop unit variable cost through analysis of the behaviour of railway expenses.

No basic units of transportation output other than those listed above were suggested by the consultants for the provinces and the Grain Handling Organizations to measure the amount of transportation work performed in moving the study traffic. Mr. Frank, however, alleged that the method used by Canadian Pacific had resulted in a higher number of train miles and, accordingly, locomotive miles, than was necessary to move statutory grain, and

he attempted to demonstrate that the number of car days and switching minutes charged to the study traffic were overstated. Mr. Saunders also had some objections to the development of train and locomotive miles, and to the development of car days.

With these exceptions, Manitoba/Alberta adopted the count of output units developed by Canadian Pacific in its cost study, and the Grain Handling Organizations did not criticize the count of output units other than those referred to above.

Train Miles
Locomotive Miles

Mr. Stenason explained that Canadian Pacific had developed the train miles attributable to the study traffic by determining the proportion for the train runs on which grain was handled by direction, that the study traffic was of total gross ton-miles on these train runs. An adjustment factor was introduced to reflect the resistance characteristics of heavily loading traffic, such as grain, in relation to more lightly loading commodities. Constructive train-miles used to handle the study traffic were developed based on the average weight of trains on which the study traffic moved weighted by the proportion of the study traffic to total traffic on each train run. Locomotive miles were developed from the addition of train miles and train switching miles of the study traffic (Vol. 18 - 2480).

The method followed by Canadian Pacific made a distinction between the movement of grain in way trains and through trains and reflected the way in which the study traffic actually moved. On through trains, Canadian Pacific handles grain in both manifest and extra trains. Dr. Edwards said that the average weights of each were very similar (Vol. 19 - 2665).

Manitoba/Alberta objected to the development of train miles attributable to the study traffic by the Canadian Pacific method which takes into account the way the traffic actually moves, and alleged that constructive train miles to move the study traffic should be computed on the assumption that grain is handled in solid trains over the eleven mainline subdivisions, Alyth to Vancouver and Moose Jaw to Fort William (Vol. 116 - 19283). They tried to justify this assumption on the grounds that part of the grain movement is handled in solid grain trains and the average weight of trains used by Canadian Pacific reflects a reduction in weight for manifest trains to permit them to achieve schedules and speeds required to service other traffic. Manitoba/Alberta did not propose that the railway policy of moving grain in manifest trains be changed, but only that the method used to develop the cost of moving grain should not reflect this practice (Vol. 116 - 19281/2).

In making the assumption that grain should be costed as though it were handled in solid trains, Manitoba/Alberta was in error. They ignored the reality of train operations and the movement of grain on Canadian Pacific.

The need to measure actual operations rather than theoretical operations is basic to cost finding. This was agreed to by Mr. Banks and he went on to say that costing based on theoretical operations gave answers that were not precise.

"Mr. Sinclair: Now, another point I think we can agree on, Mr. Banks, is that the presentation of a rail cost analyst in costing only sets up a theoretical operation where studies are not available which have measured the actual operation.

"Mr. Banks: I think we can agree to this, Mr. Sinclair, and I think we can also agree that because theoretical models are set up, it cannot be concluded that the answers are precise."
(Vol. 130 - 22295)

Solid grain trains are occasionally operated on Canadian Pacific but for operating reasons, as well as grain service requirements, grain cannot be moved in solid grain trains regularly. There are periods during the year when the grain unloadings at the Lakehead and Vancouver are spasmodic as a result of restrictions of the Canadian Wheat Board. Canadian Pacific is frequently called upon to move certain kinds and grades of grain to export positions in smaller volumes than solid trains to meet commitments of the Canadian Wheat Board which is in complete control of grain marketing (Vol. 68 - 12007;12009, Vol. 132 - 22594).

Manitoba/Alberta also failed to appreciate the fact that certain elements of costs associated with the movement of grain would increase substantially if grain did not move in part in manifest trains. A special study conducted by Canadian Pacific to assess the effect of holding freight cars and motive power at terminals so as to achieve tonnage grain trains has shown that annual ownership costs for the additional equipment needed under the Manitoba/Alberta assumptions would be in excess of \$1,000,000. This amount does not include additional costs for crew delays, storage and other costs which would add further substantial sums (Vol. 132 - 22560/1).

Manitoba/Alberta also made the incorrect assumption that manifest train schedules are fixed and that these trains are operated regardless of volume of traffic offered and, therefore, grain moves as fill-out on manifest trains.

Mr. Stenason described the tests that he conducted to ascertain that manifest freight trains on Canadian Pacific are being adjusted to changes in traffic volume. In this special study, grain moving on manifest trains by train run and direction was sampled. For each train run, the gross ton miles attributable to the study traffic were deducted from the total to determine the number of trains which would be left on the basis of average train weight if grain was not handled. The results were discussed with traffic and operating officers who found that the number of trains left after elimination of grain would be sufficient to service the non-grain traffic (Vol. 67 - 11864/5). Dr. Edwards said that he suggested these tests, in connection with others, and that the question of variability of these trains was not merely an assumption but was fact (Vol. 72 - 12865).

Manitoba/Alberta developed constructive train miles attributable to grain on a theoretical basis, using from a one-half of one percent sample the maximum net rated tonnages operated on each of the eleven mainline subdivisions Alyth to Vancouver and Moose Jaw to Fort William. Manitoba/Alberta then computed the percentage reduction from the train weight used by Canadian Pacific in the loaded direction indicated by the maximum train weights which Manitoba/Alberta developed. The crew wages and train miles developed by Canadian Pacific for the loaded direction only were doubled, and the percentage reduction described above was applied to the doubled crew wages and train-miles, thus reducing train-miles and crew wages in both loaded and empty directions by the same amount. As shown by Canadian Pacific, this method contained a fundamental error (Vol. 132 - 22559). It resulted in Manitoba/Alberta reducing train miles charged by Canadian Pacific in the empty direction on certain train runs by a greater amount than the train miles which had been actually charged, thus resulting in negative train miles in the empty direction.

It is apparent from Mr. Banks' cross-examination that what Manitoba/Alberta did, was not what they intended to do. Mr. Banks stated (Volume 131 - 22435-6) that he had approached his development of train miles attributable to the study traffic on the basis that there would be a balancing of train miles as between the loaded and empty directions. That is, the same number of train miles would be attributed in the empty direction as in the loaded direction. Canadian Pacific has shown that if Manitoba/Alberta had in fact done what they thought they had done they would have increased the train miles attributable to grain over those charged by Canadian Pacific by some 649,000 train miles, rather than the claimed reduction of 915,000 train miles (Volume 132 - 22558). Through this basic error Manitoba/Alberta in their presentation reduced the variable cost of grain by over \$2,000,000 (Volume 132 - 22503).

At Volume 116, pages 19243-4, Manitoba/Alberta suggest there may be some overstatement of crew wage cost because of the development by Canadian Pacific of crew wage cost for way trains on the basis of complete variability with traffic volume. As stated at Volume 67, pages 11904-5, tests performed by Canadian Pacific showed way trains to be 100 percent variable with traffic volume and way train schedules were flexible and adjusted from time to time in accordance with traffic volume.

The grain handling organizations based their criticism on the widespread feeling in Western Canada that grain is economical traffic for the railways because, among other things, it moves in heavier than average trains (Volume 117 - 19507). This was felt to be the result of the two facts that grain loads heavily per car and it is susceptible of moving in solid trains. From the general feeling and the facts above referred to it was concluded that average weight of through grain trains was in excess of the average weight of through trains.

The grain handling organizations attempted to support their hypothesis by an analysis of the trains used in preparing Exhibit 142.

The analysis was based on 125 trains in the loaded direction from Winnipeg to Fort William. From this was computed a constructive average weight of train required to move grain which was 21% heavier than the average train weight in the sample of 125 trains.

Canadian Pacific has shown (Volume 132 - 22562-5) that Mr. Saunders made three errors in his computation: first, he did not take into account the fact that empty cars move from Fort William in lighter trains than the average of all through trains in that direction; secondly, he made no allowance for the train miles incurred account light running to return power and crews; and thirdly, he failed to take into account the movement of both loaded grain cars and empties on the balance of the movement on the mainline between Winnipeg and Vancouver. Canadian Pacific performed a test based on a 3% sample of through trains in both directions on representative segments of the mainline between Vancouver and Fort William, which showed that the train miles in its cost study were within one tenth of one percent of those developed by consistent application of the procedure suggested by the grain handling organizations, when account was taken of light running.

Neither Manitoba/Alberta nor the grain handling organizations have demonstrated that train miles attributable to the study traffic were improperly computed by Canadian Pacific. The computations of Manitoba/Alberta were based on unrealistic and incorrect assumptions and contained a fundamental error. The suggestions of the grain handling organizations were based on mere feeling which they tried to confirm by use of limited data which was not representative.

Car Days

Car days is the basic output unit which was used with car miles in developing repairs, depreciation and cost of money in respect of freight cars used to move the study traffic. In the original development of freight car costs, the time portion was arrived at on the basis of active car days. Active car days for the loaded and

empty movement of the study traffic were developed from a sample of 3700 grain movements to export positions in Western Canada during the year 1958. Active car days represented all the time the cars were under load plus the time of the related prior empty movement west of Fort William. All storage and repair times were excluded from active car days (Volume 18 - 2479). Dr. Edwards said that tracing the prior empty movement was the basis he had followed in most of the car-mile and car-day studies he had conducted. In his view, the post empty movement would not result in fewer empty car days than the prior empty movement (Volume 71 - 12643). This was supported by tests made by Canadian Pacific (Volume 69 - 12295-6) and by Canadian National (Volume 73 - 12949).

The consultants of the various parties in the earlier conferences suggested that a more accurate cost would be obtained if the freight car repair and ownership costs were computed on the basis of calendar car days which reflected the idle time of Canadian Pacific box cars. Accordingly, a special sample of 300 box cars was drawn and analysis of the active idle characteristics of these cars was made for the whole of 1958 (Volume 66 - 11823). The number of days the cars were active and the number of days the cars were idle were counted and a ratio of idle to active time was developed for cars on line, after assigning idle time to the off-line days in accordance with the allowance for idle time compensated for in the per diem car rental rate, which is set by the Interstate Commerce Commission and the Board of Transport Commissioners. This ratio was applied to the number of active car days in grain service to produce the number of calendar car days traceable to the study traffic. Freight car costs recomputed on the basis of calendar car days were shown at Volume 66 - 11654.

Manitoba/Alberta and the Grain Handling Organizations then criticized the Canadian Pacific method of developing car days on the calendar car day basis suggested by the various consultants of the parties.

The criticisms of the Grain Handling Organizations are summarized in Volume 132 - 22566. Canadian Pacific answered in detail the points raised by the Grain Handling Organizations in Volume 132 - 22567-9.

The Grain Handling Organizations criticized the idle ratio developed by Canadian Pacific to account for idle time traceable to grain. First, they objected to the development of idle time traceable to cars off-line. Secondly, they suggested that the 300 car special sample could contain an error in that a different method of counting was used relative to the method used in the 3700 car sample. Thirdly, they suggested that it would be more meaningful to relate idle car days to the number of car loadings rather than to the number of active days (Volume 117 - 19513-4 and 19518).

Furthermore, the Grain Handling Organizations suggested that Canadian Pacific could have developed idle time for car days in grain service from the cycle of the 3700 box cars used to develop active car days.

The development of idle car days traceable to grain was shown by Canadian Pacific at Volume 132 - 22567-9 to be correct. It was necessary to use the idle time allowed in the per diem rate in assessing the amount of idle time which can properly be traced to the movement of Canadian Pacific cars off line.

Different procedures were required in segregating idle and active car days in the 300 and in the 3700 car samples. These procedures differed because of the different circumstances surrounding the generation of idle time in the two samples. For example, grain cars are not stored at country origin stations but dispatched specifically for grain loading from main centres, while for other traffic cars are stored, and idle time occurs, at or near the originating point.

The tests performed by Canadian Pacific and reported at Volume 132 - 22568 show that no overstatement of idle time attributable to grain has arisen.

The suggestion made by Mr. Saunders that idle car days be related to car loadings rather than to active car days is a suggestion that Mr. Saunders himself did not adopt in the Southern Governors' Grain Case. Under cross-examination Mr. Saunders agreed that the normal way to develop idle time is "by relating idle days as a ratio of active days" (Volume 129 - 22193).

In regard to the suggested use of the 3700 car sample to develop idle time attributable to the study traffic, this would produce incorrect results since grain loadings on Canadian Pacific peak during the three months following the opening of navigation. A peak also occurs in the movement of non-grain box cars traffic in those months. Therefore a sample drawn on a basis which reflects the loading of cars in grain service would not provide proper coverage of the off-peak period when the bulk of idle time occurs.

The objections of Manitoba/Alberta to the car days developed by Canadian Pacific are set out in Volume 116 - 19268-72. These criticisms were answered by Canadian Pacific in detail in Volume 132 - 22570-4.

The major difference between Canadian Pacific and Manitoba/Alberta in the development of freight car repair and ownership costs attributable to the study traffic lies in the error which Manitoba/Alberta made in their development of active car days in grain service. A substantial part of the difference in car day count resulting from this error was admitted at the Cost Conference (Volume 130 - 22277-8). The remaining difference between the figure conceded by Manitoba/Alberta and that developed by Canadian Pacific results from the failure of Manitoba/Alberta to take into account and allow for the slower speed of grain in transit than the speed in transit of other freight traffic. Mr. Banks admitted under cross-examination (Volume 130 - 22439) that an adjustment should be made to reflect the slower speed in transit of grain.

After making adjustments for slower in transit speed and other matters described in the rebuttal evidence, the freight car repair and ownership costs attributable to grain under the Manitoba/Alberta method would increase by some \$83,000 the amount charged in the Canadian Pacific cost study (Volume 132 - 22576).

Switching Time

Manitoba/Alberta criticized the Canadian Pacific development of switching time required to move the study traffic. Switching time was developed for determination of the variable cost of the switching portion of track maintenance and depreciation, road and yard locomotive repairs and depreciation, yard expenses, the cost of money on investment in road property and locomotives arising from yard and train switching.

Mr. Stenason fully described the extensive studies conducted by a group of Operating and Research personnel under the direction of Mr. McGinn, the yard specialist referred to, in order to determine the time required to switch cars of grain and grain products (Volume 18 - 2482-99).

Dr. Edwards described the switching studies in this way (Volume 19 - 2674/5):

"The program for the switching studies was carefully planned. All elements of switching were carefully determined in such a way that all yard engine time during the study period was accounted for. The program for the studies and the training of the study parties and the yard forces was well organized and supervised throughout. A large proportion of the yards was studied without having resort to extensive sampling".

Switching is done at origin stations on branch lines by road engines, and it is done by yard engines at intermediate and destination terminals, except for some small points where it is done by road engines. The study team familiarized itself with the characteristics of the operations performed in each yard, and then established the following categories of switching: classification, industrial, transfers, scaling, repair tracks and shop track switching.

The foremen of each yard studied were instructed by a member of the study team to keep a complete record for each shift during a four-day period of all work performed, showing the time required to perform each assignment and the number of cars handled. The records of the yard foremen were examined by the study team and the work described was segregated into the sub-component elements of switching. The total amount of time for each element during the four-day study period divided by the total number of cars which received that element of switching during the same period gave the average time per car for each element of switching. The operations during the study period were normal for summer operations.

The yards were grouped on the basis of volume of traffic and individual characteristics of the yard. All the large yards were studied and representative yards were selected for medium and small yards. The yards where field studies were conducted accounted for 74% of all yard engine hours in Western Canada. At each of the yards studied, switching times were developed for handling local and through traffic and the times developed for the representative yards were applied to the other yards in the group that they were chosen to represent.

The elements of switching service applicable to the handling of a through or local car of grain or grain products in each yard were developed through special study. The total switching time involved in handling a car of grain in each yard was established by adding the average switching time per car for all of the applicable switching elements. The same procedure was followed for the loaded car as for the empty car.

The total switching time incurred in handling grain and grain products traffic during 1958 was then developed by multiplying the time per car by the number of cars to which each of the separate services was performed.

The time spent switching cars of grain traffic at wayside stations was developed similarly by a special study of time spent and work performed by road engines at representative stations in the Prairie Provinces.

In cost conferences subsequent to Mr. Stenason's first appearance before the Commission, it was suggested by the consultants for Manitoba/Alberta and the grain handling organizations that the use of average classification time at through terminals could have resulted in an overstatement of switching time for through cars as compared with local cars. Immediately, Canadian Pacific undertook special studies at three intermediate terminals - Kenora, Swift Current and Revelstoke. In each of these studies, the classification work done to through cars was separated from that done to local cars, and new average switching times for through cars were calculated (Volume 66 - 11656-7 and Volume 69 - 12225). Appropriate revisions were made which appear at Volume 66, page 11654, and, at the same time, yard times which in the original calculation were based on normal summer operations were adjusted to reflect winter conditions on the basis of a special study.

In an effort to reduce the yard switching costs chargeable to grain Manitoba/Alberta recalculated the switching time used in the cost study of Canadian Pacific reducing such time in four areas: Elimination of switching time account milling in transit (Volume 116 - 19230); the alleged effect of multiple car cuts on classification switching (Volume 116 - 19289); restriction of switching work at intermediate terminals (Volume 116 - 19290) and reduction in the winter switching adjustment (Volume 116 - 19292). Canadian Pacific dealt with each of the points raised by Manitoba/Alberta in its rebuttal evidence (Volume 132).

Canadian Pacific has already made clear its position with regard to inclusion of milling-in-transit revenues and expenses in the cost study. Milling-in-transit is considered as part of the complete movement of grain and grain products to export positions in Western Canada.

At Volume 132, pages 22583-93, Canadian Pacific set forth a detailed analysis of the effects of multiple car cuts on classification switching. The method used by Manitoba/Alberta to compute a reduction in classification time was based on the application to Canadian Pacific of studies developed on other railways which were never intended for costing purposes. Canadian Pacific developed, from its research studies in Winnipeg terminals, and on the basis of a thorough examination of the work involved in classification switching, the effect of multiple car handling on classification switching time. Canadian Pacific also examined the relationship between size of cut of grain and all traffic at large, medium, and small terminals in Western Canada. It found that the basis used by Manitoba/Alberta for measuring relative size of cuts was erroneous. The terminal chosen by Manitoba/Alberta to represent medium size terminals was not representative. An examination showed that grain moved in cuts smaller than the average for all traffic if representative medium size terminals were used. At small terminals, Canadian Pacific examined the relative size of cut for grain and all traffic at representative yards, segregated into three groups rather than the single yard selected by Manitoba/Alberta. Application of the Canadian Pacific analysis to the correct relation between size of cut for grain and all traffic showed the amount involved in such an adjustment to be some \$23,000.

In developing switching work done to through cars at medium size terminals, Manitoba/Alberta ignored important elements of switching. They omitted switching time at terminals between Fort William and Winnipeg and between Calgary and Vancouver required for cars which are set off for storage purposes because of congestion at export positions and grade of grain demands. They also omitted, in some instances, work required account change in tonnage between inbound and outbound trains. Furthermore, Manitoba/Alberta did not properly reflect the extensive classification switching time at medium size yards between Winnipeg and Calgary which is required for the transfer of grain from local to through trains. This element of work was also ignored at Kenora. If Manitoba/Alberta had included all elements of classification

switching work required to move through cars of grain at medium size terminals, and if they had applied the appropriate representative switching time to such cars, they would have arrived at the same total switching time as that developed by Canadian Pacific (Volume 132 - 22594/7).

The answer of Canadian Pacific in regard to winter switching is made in Volume 132, page 22592. The Manitoba/Alberta development of their winter switching adjustment is in error. The correction of the Canadian Pacific error would amount to an adjustment of about \$40,000, or less than 1% of switching costs.

Manitoba/Alberta suggested that the train switching time for grain at origin stations (Volume 116 - 19241-2) was overstated due to the failure by Canadian Pacific to take into account (1) station reloads, and (2) effects of multiple car cuts on train switching at grain origin points. Evidence set forth at Volume 132, page 22514, shows that no such overstatement exists.

In developing switching time once again Manitoba/Alberta chose to ignore the actual operations performed. Costing, to be realistic, must reflect the actual operations which are required to move the traffic under study.

Development of Unit Variable Cost

Multiple Regression Analysis and Road Maintenance Expenses

To determine about one-third of the variable cost of moving the study traffic, Canadian Pacific employed the technique of multiple regression analysis (Volume 67 - 11837). Mr. Stenason said that simple regression analysis had been used by Canadian Pacific for some time and, as a result of gradual improvement in costing procedures and with the advent of high speed electronic computers, multiple regression analysis had been adopted (Volume 67 - 11835-6). The care with which the regression models were selected and the results tested was fully described. He explained that the testing and the final models were

carefully checked by Dr. Hood, the railways' statistical consultant (Volume 19 - 2707). The results of the regression analysis were also reviewed by Dr. Ford K. Edwards who said that he would not accept any conclusions arrived at on the basis of a statistical technique until it had been subjected to observational test (Volume 72 - 12758). When unit variable costs had been derived by use of regression analysis, substantial testing through field studies and through the application of knowledge and experience was done to ensure that they were reliable. Mr. Stenason explained, for example, that the variable costs determined from the regression for station expenses were carefully checked through field studies in Western Canada (Volume 66 - 11751). Special engineering studies were also made (Volume 132 - 22521-4).

That multiple regression analysis was a considerable advance over procedures in use in the United States was agreed to by the consultants of Manitoba/Alberta and the grain handling organizations (Volume 128 - 22065 and Volume 130 - 22301).

Mr. Saunders, appearing on behalf of the Grain Handling Organizations, suggested (Volume 117 - 19483) that Canadian Pacific

" . . . did not carry their analysis sufficiently far. There were refinements of the C.P.R. data which would have improved the regression and contributed more detailed information. Examples of these are the breakdown of track miles into main line, branch line and switching components, and the separate use of yard and train locomotive switching miles. There was at least one highly relevant influence on track expense, namely, the extent of gradient and curvature, that they failed even to recognize and which would have contributed to the explanatory quality of the regression . . . Finally the C.P.R. should have studied the relative costs of freight and passenger service, or at least have assumed a much higher influence of passenger gross ton miles on track expenses, as being more realistic and providing a better unit cost."

During Mr. Saunders' cross-examination his position was clarified:

"Mr. Sinclair: Would you rather take the average and apply average percent of variability as developed by the ICC cost finding procedures, or would you rather do tracing through the application of multiple regression to track maintenance expense ?

Mr. Saunders: I would much prefer to use the technique of regression. There is no question about that. All I am saying is the numbers we have been working with up to now in the field of track maintenance, using regression, are in my opinion not the last word.

Mr. Sinclair: Oh, I see. What you are saying is that further refinement may be possible?

Mr. Saunders: I think further refinements are essential.

Mr. Sinclair: Further refinements are essential to improve it beyond what they have under the ICC; or, is it already improved over what they have under the ICC?

Mr. Saunders: Well, I think anything that produces a number other than uniform percent, which is the ICC method, is an improvement -- there isn't any question in my mind about that -- particularly in respect to this track maintenance feature." (Volume 128 - 22037)

On the question of passenger-freight weighting Mr. Saunders under cross-examination said this:

"Mr. Sinclair: Now, for instance, in the Southern Governors' Grain Case when you did your cost study you were satisfied that you were not glossing over things that would have a significant effect on the result.

Mr. Saunders: That is right. This way train question you asked me about is a good illustration of that; when you have 1000 miles of haul in the west the effect of a 20 mile movement in a way train on that would not be very great so I did not see that there was any problem in evaluating it.

Mr. Sinclair: And you were quite prepared to take the average in the Southern Governors' Grain Case and you were quite prepared to take a one for one or close to a one for one weighting, passenger versus freight G.T.M. in that case?

Mr. Saunders: I had to accept the accounting records as they were, I could not do anything about that on the freight and passenger.

Mr. Sinclair: But you did not make any qualifications on that?

Mr. Saunders: Well, I have done it a number of times; sometimes you have to live with facts as they are and work from there.

Mr. Sinclair: But notwithstanding living with facts as they were, as I say, you have agreed if the rate proposals put forward by the people in the Southern Governors' Grain Case were implemented they would be non-compensatory and notwithstanding that, you, as you say, could not make a passenger freight separation.

Mr. Saunders: That is right."

(Volume 127 - 22018-9).

Mr. Saunders presented to this Commission 14 regression models of track maintenance expenses. He stated that the analysis he had made and the regressions he had derived were improvements over those of Canadian Pacific but he was unwilling to suggest the utilization of any of his regressions for the development of track maintenance expenses chargeable to export grain. He preferred to contend that the different equations he introduced illustrated the improvements that might be made in the analysis of track maintenance expenses.

Canadian Pacific has shown that the changes suggested by Mr. Saunders were not meaningful and significant. Furthermore, in many instances the alleged refinements could well introduce serious distortions into the regression equations. In answer to the changes in the regression suggested by Mr. Saunders, Canadian Pacific showed that:

The separation of locomotive switching miles into yard and train switching led to unit costs per road locomotive switching mile ranging from three to sixty times the unit cost per yard switching mile. Such results cannot be accepted because the tracks on which road switching and yard switching movements occur are constructed and maintained to comparable standards and the speeds of each type of switching are similar (Volume 132 - 22533).

The breakdown of miles of track suggested by Mr. Saunders cannot be accepted, as the intercorrelation between main line miles of track and gross ton miles, and between miles of switching track and locomotive switching-miles, distorts the output coefficients. A test performed by Canadian Pacific corroborated the fact that the inclusion of miles of main line tracks seriously distorted the gross ton-mile coefficient. Mr. Saunders himself recognized the distortion introduced by inclusion of miles of switching track, and chose to ignore the problem by omitting an important explanatory variable. As the work included and expense in the minimum maintenance cost per mile of track is the same for all types of track, it is conceptually wrong to introduce separate independent variables for the different

types of track (Volume 132 - 22527-8).

The influence of topography is made up of many elements including the amount and characteristics of curvature, the extent of gradient, sub-grade conditions, amount of precipitation, rivers, drainage patterns, and frequency of highway crossings. It would be most difficult, time consuming, and expensive to develop any comprehensive basis for adequately measuring all of these elements. This would not be warranted as it would not significantly alter the results of the Canadian Pacific track maintenance and depreciation regression model because topography, considering all its component elements, is distributed randomly over the Canadian Pacific system and therefore, the constant term in the Canadian Pacific regression absorbs this influence, and the variable cost coefficients are not significantly affected (Volume 132 - 22534-7). The measure proposed by Mr. Saunders is, by his own admission (Volume 128 - 22066), "crude", and by measuring only one element of topography, namely, gradient, it can well introduce serious distortions into the regression.

The weighting factor of six to one assumed by Mr. Saunders is based upon a series of arbitrary suppositions, none of which can be supported by knowledge of the track maintenance procedures and practices of Canadian Pacific (Volume 132 - 22530-2). Furthermore, the application of weights suggested by the American Railway Engineering Association yields a weighting factor of some 1.5 to 1. This result is, if anything, conservative, as it is predicated upon steam operations. The weighting factors proposed by Mr. Saunders are clearly unrealistic.

The evidence is that the statistical techniques employed by Mr. Saunders are highly questionable. He has been moved by a desire to improve the R^2 values in his regressions without considering the meaningfulness of relationships he proposes and of the results obtained. Many of the improvements in R^2 value may not be real realistical improvements, as Mr. Saunders admitted under cross-examination (Volume 127 - 22023). The weighting scheme proposed by

Mr. Saunders (Volume 117 - 19502) is based upon a lack of understanding of the true purpose of combining highly inter-correlated variables in multiple regression analysis (Volume 132 - 22552).

What can we conclude from the evidence of Mr. Saunders on regression? The study made by the Canadian railways has given him the opportunity of experimenting and learning more but, after spending a lot of time developing and testing different models, just as the railways did to a far greater extent prior to the adoption of the models used in their study, he failed to advance any model which could be adopted and which improve on the Canadian Pacific analysis.

The witness on regression analysis on behalf of Manitoba/Alberta was Dr. Borts. His objections to the Canadian Pacific regression analysis were as follows: The Canadian Pacific models failed to depict output and cost variation among regions of homogeneous operating characteristics (Volume 116 - 19119); the influence of geography on cost gives rise to differing degrees of association between cost and output in the various regions of the railway (Volume 116 - 19122); Canadian Pacific used regression coefficients which fail the significance test based on a 5% probability level (Volume 116 - 19140); output units other than those used by Canadian Pacific were more meaningful in describing cost behaviour (Volume 123 - 20374-82).

Dr. Borts has presented regression models which he characterises as corrections to the Canadian Pacific models. It is the position of Canadian Pacific that a critical analysis of the deficiencies which Dr. Borts claims exist in the Canadian Pacific models shows that no such deficiencies are present.

Dr. Borts reports to several highly questionable statistical techniques. He has pyramided regressions in three instances despite the fact that he admits this to be undesirable in principle and that it was utilized only because direct regression with the independent variables he chose did not yield what he considered significant

results (Vol. 123 - 20308). This was done despite the fact that he agreed no statistical test of significance could be made of the cost coefficients developed by his final equation (Vol. 123 - 20403). It is the position of Canadian Pacific that Dr. Borts has failed to give any acceptable reason for rejecting the multiple regression models of Canadian Pacific and resorting to the statistically inferior pyramiding technique (Vol. 132 - 22545-7).

Dr. Borts developed separate East-West regressions in respect of: Maintenance and depreciation of shops and enginehouses; maintenance and depreciation of power plants; and gross investment in road property. In two of the separations he used different explanatory variables in the East as compared to the West. As stated in the rebuttal evidence of Canadian Pacific (Vol. 132 - 22541):

"The functions of the structures in these accounts is no different in one part of the system than the other."

In regard to maintenance and depreciation of shops and enginehouses, the Engineer of Track of Canadian Pacific, in the rebuttal evidence (Vol. 132 - 22537 and again at 22542) noted that the explanatory variables used by Dr. Borts were not meaningful and that:

". . . the explanatory variable applied to these expenses must reflect their purpose. As mentioned previously their purpose does not vary across the system."

Moreover, the standard statistical covariance tests have shown that there is no difference between the behaviour of the expenses in these three groups of accounts between Eastern and Western Canada (Vol. 132 - 22541 and 22547-8).

Furthermore, Dr. Borts has failed to apply the "K" test namely, that statistics cannot be used as an end in themselves - all statistical results and tests must be meaningful in the light of knowledge of the operation being analyzed.

For statistical reasons, Canadian Pacific is of the view that the Manitoba/Alberta contention that a two-tailed test of

significance at the 5% level should be used is, in fact, an argument that a one-tailed test at the 2½% level is actually being used (Volume 132 - 22549).

Dr. Borts has criticized six of the regression equations submitted by Canadian Pacific and has developed alternative regressions for each of these expense items. These will now be discussed.

Account 202 - Track Maintenance and Depreciation Expenses -

Dr. Borts made three criticisms of the Canadian Pacific track maintenance and depreciation regression model. These are exclusion of a factor to reflect geography; the use of regression analysis to estimate the minimum maintenance cost per mile of track; and the use of gross ton miles as an output variable to reflect line haul work. In his model 202C, he assumes he has corrected these so-called deficiencies.

He introduces investment in tunnels, bridges and culverts as an independent variable to "capture the effects of geography". This is wrong. The location of large bridges owned by Canadian Pacific suggests that there is no relationship between investment in bridges and other major elements of topography. Further, the amount of investment is not even a reliable measure of the structures to which it relates since investment is greatly influenced by the type of construction employed and the price levels prevailing at the time of construction (Volume 132 - 22535-6).

In model 202C, Manitoba/Alberta have used an estimate extraneous to the equation for minimum track maintenance cost per mile of track. A figure of some \$742 was advanced as the minimum track maintenance cost by Manitoba/Alberta. Canadian Pacific has shown (Volume 132 - 22521-6), that important elements of track maintenance and depreciation which are unaffected in total or in part by the traffic handled have been excluded from the Manitoba/Alberta computation. A proper engineering estimate of the minimum track

maintenance cost per mile of track on Canadian Pacific is some \$1,100 (Volume 132 - 22524). It may be noted that Mr. Saunders, when asked as to his estimate of minimum track maintenance expense on Canadian Pacific, said:

"So that in the typical division you would be talking about a total of \$1,200, \$1,300 a mile. I use the figures roundly that way and emphasize 'about' because I don't feel these are that precise or that particularized".
(Volume 128 - 22059).

The contention of Manitoba/Alberta that maintenance costs of certain United States branch lines for which abandonment applications have been made supports a figure of some \$742 must be rejected as it fails to take into account the large scale deferred maintenance on such lines. The consultants of Manitoba/Alberta have recognized that if the minimum track maintenance estimate made by them is wrong, the costs developed by their equation for track maintenance expenses are also wrong.

"Mr. Sinclair: Dr. Borts accepted this figure of \$742.52 as a minimum maintenance cost per mile of track and deducted it from the dependent variable before he ran his regression analysis.

Mr. Banks: Correct.

Mr. Sinclair: And you would agree that the coefficients in the regression 202C are inter-related with this minimum track maintenance figure of \$742 ?

Mr. Banks: I would certainly agree to that"
(Volume 130 - 22392-3).

Dr. Borts recognized the situation clearly.

"Mr. Sinclair: If the calculation for minimum track expense apart from the \$742 that you deducted from the dependent variable expense was wrong, I suggest to you that this makes the coefficients in your equation wrong.

Dr. Borts: Oh, I would agree with that.

Mr. Sinclair: You would agree with it ?

Dr. Borts: Oh, certainly".
(Volume 123 - 20369).

By excluding important elements of expense, Manitoba/Alberta introduced a downward bias in their development of the cost of moving grain to export positions in Western Canada.

The suggestion that train miles is a better output variable than gross ton miles to explain track maintenance and depreciation expenses must be rejected. The use of train miles ignores the weight of train entirely and implies that the cost incurred by a train moving two or three cars is equal to the cost incurred by a four diesel unit 100 car freight train. This point is fully developed in Volume 132 - 22529-30;..

Account 235 - Maintenance and Depreciation of Shops and Enginehouses.

In his analysis of this category of expense (Volume 116 - 19130-32) Dr. Borts develops separate East-West regressions utilizing the technique of pyramiding. As discussed earlier, both these techniques are highly questionable and no justification has been introduced for their use. The ultimate explanatory variable put forward by Dr. Borts is yard and train switching miles. Shops and enginehouses are maintained for the repair of all motive power and rolling stock and it makes no sense whatsoever to relate this item of expense only to switching work done. The relationship proposed by Dr. Borts implies that if Canadian Pacific contracted out all of its switching operations and became a line haul railway only, it would have virtually no maintenance and depreciation of shops and enginehouses. This is obviously unrealistic. Canadian Pacific showed (Volume 132 - 22538) that the correct variable to use in analyzing this account was direct equipment maintenance expense.

Account 253 - Maintenance and Depreciation of Power Plants.

Again Dr. Borts resorted to pyramiding and East-West separation. Furthermore, he introduced a different explanatory variable in Eastern and Western Canada. This cannot be justified in light of the operating practices of Canadian Pacific. The ultimate independent variables used by Dr. Borts for Western Canada, is yard and train switching miles. This cannot meet the "K" test. Canadian Pacific showed (Volume 132 - 22539) that the most reasonable variable to use was dollars of station employee expense.

Gross Investment in Road Property

Dr. Borts developed separate East-West regressions for this account. A switching output variable was excluded from regressions in both Eastern and Western Canada and miles of track were excluded from the Eastern Canada regression.

Such exclusions are wholly unrealistic as switching tracks are built to different standards of construction depending upon the amount of usage to which they are subjected and there is a basic minimum level of investment per mile of track independent of traffic volume (Vol. 132 - 22540-1).

Equipment Maintenance

Locomotive Repairs -

Steam locomotive repair expenses are not segregated in the Canadian Pacific accounts between yard and road or between passenger and freight. Diesel locomotive repair expenses are segregated between yard and road but not between passenger and freight.

To give weight to the service in which locomotives were used and different characteristics of locomotive repair expenses, Canadian Pacific separated steam locomotive repair expenses on the basis of capacity miles and a special study was conducted for the separation between freight and passenger.

Counsel for Manitoba suggested in cross-examination that there could be an element of constancy in Canadian Pacific locomotive repairs on the basis of results of a regression analysis of these expenses using United States data for the years 1947-50. The consultant for Manitoba/Alberta, referring to the same study, said that there was a possibility that the Canadian Pacific procedure overstated the variability of locomotive repair costs. Mr. Stenason said, in cross-examination (Vol. 67 - 11924) that the analysis performed in the United States covered a period during which new diesel fleets were being assimilated by the U.S. railway system, and that could easily have been the reason for the presence of some constancy. Canadian Pacific maintains diesel and steam locomotives

in such a way that locomotive repair expenses in both road and yard service are completely variable with locomotive miles (Vol. 18 - 2594). Dr. Edwards said that, based on his experience, it would require unusual factors to be present to depart from the basis that equipment maintenance, outside of superintendence and overhead and work equipment, varies 100 percent with traffic (Vol. 19 - 2709).

The suggestion of Manitoba/Alberta of some element of constancy in locomotive maintenance costs was also dealt with in the rebuttal evidence, where it is stated:

"Diesel locomotives on Canadian Pacific are maintained on a run out mileage basis on a preventative maintenance system. Therefore the use of 100% variability is based on the way in which diesel locomotives are maintained on Canadian Pacific. Therefore on Canadian Pacific maintenance of locomotives are directly related to work done."
(Vol. 132 - 22516)

Dr. Edwards expressed the view that the treatment of locomotive repairs was conservative for several reasons, and that it resulted in an understatement of the costs attributable to the study traffic. Tests indicated that the unit miles per locomotive-mile in the west were higher than in the east, with the result that repair costs of the study traffic computed on a locomotive mile basis were lower than on a unit mile basis (Vol. 74 - 13010). Steam locomotives were not shopped for major overhauls in 1958 and repair costs for that year were thus lower than normal. Furthermore, the diesel repair expenses in 1958, in view of the relatively low age of the units in service, did not reflect the entire cost of diesel locomotive repairs which is expected after the completion of a full maintenance cycle (Vol. 18 - 2598). These factors mean that Canadian Pacific had a conservative charge for locomotive maintenance expenses by taking a transitional period.

Notwithstanding their generalized criticisms, it is not to be wondered that Manitoba/Alberta in the light of the evidence, did not attempt to revise the unit variable costs used by Canadian Pacific for locomotive repair expenses in its cost study. It should

also be noted that the consultants for the Grain Handling Organizations did not criticize the development of this item of expense.

Locomotive Depreciation -

Locomotive depreciation attributable to grain was developed on the basis of depreciation rates approved by the Board of Transport Commissioners. Neither Manitoba/Alberta nor the Grain Handling Organizations revised or criticized the unit locomotive depreciation expenses developed by Canadian Pacific.

Freight Car Repairs -

Canadian Pacific originally allocated freight car repair expense in the ratio of 70% to car miles and 30% to car days, and made a deduction from the total cost of freight car repairs to reflect the repair portion of the net credit in hire of freight cars, representing the repair cost of miles run by Canadian Pacific cars on foreign lines. The 70 - 30 ratio was substantiated through Interstate Commerce Commission studies and tested by mechanical officers of Canadian Pacific (Vol. 18 - 2600). Mr. Stenason explained that in discussions between the consultants of Manitoba/Alberta, the Grain Handling Organizations, and the railways, it was suggested that freight car repair expenses should be broken down to cover those variable with inspections, with car miles and car days. Accordingly, inspection costs amounting to 16 percent of total repair costs were first deducted, and the unit cost of inspection was developed based on total car miles on Canadian Pacific, excluding caboose. Any adjustment for per diem debits or credits was not appropriate when dealing with the cost calculated on this basis. The balance of freight car repair expenses was allocated between car miles and car days on the basis of 70% to car miles and 30% to car days. The unit cost for the car-mile portion of repair expenses was then developed on the basis of car miles of Canadian Pacific cars both on line and off line, to reflect the fact that the study traffic is not handled in foreign cars. The unit cost for the car day portion of repair expense was developed on the basis of calendar car days.

The revised freight car repair expenses were set forth in Volume 66 - 11654.

Manitoba/Alberta advanced a number of criticisms in regard to the freight car repair expenses of Canadian Pacific as set out in Volume 66 - 11654.

First, because of the fact that the 16% inspection cost was based on United States experience, they rejected it. It is important to note that Manitoba/Alberta, in their cost presentation, made no allowance whatsoever for inspection of cars moving grain. Mr. Banks, under cross-examination, said he did not know what the cost would be and therefore he ignored it:

"Mr. Sinclair: By taking the 16% figure we have likely been conservative with the C.P.R. cost study.

Mr. Banks: Well, that is your position; we do not know because we have no way of checking what the inspection element is."
(Vol. 131 - 22471).

In its rebuttal evidence regarding the 16% allowance for inspection, Canadian Pacific stated:

"While there are fewer interchanges between different railways in Canada than in the United States, there are as many terminals per thousand miles of line-haul because of operations in Canada as in the United States. Off-setting fewer interchanges in Canada are more thorough inspections because of climatic conditions."
(Vol. 132 - 22573).

In regard to the other criticisms advanced by Manitoba/Alberta on freight car repair expenses, detailed answers of Canadian Pacific are set forth in Volume 132 - 22573/4. Canadian Pacific pointed out that as a test the Form A method of development of freight car repair and ownership costs had been used. The Form A method automatically took care of the off-line car mile and the net per diem credit criticism raised by Manitoba/Alberta. The application of the Form A method showed that the Canadian Pacific cost for freight

car repair and ownership as set forth in Volume 66 - 11654 was, if anything, conservative (Vol. 132 - 22573).

Freight Car Depreciation -

Freight car depreciation, as explained by Mr. Stenason, was allocated to the study traffic in the ratio of 45% to car miles and 55% to car days. These percentages were substantiated through both I.C.C. studies and tested by mechanical officers of Canadian Pacific (Volume 18 - 2601). These percentages were not criticized by the consultants of Manitoba/Alberta and the Grain Handling Organizations. Following suggestions made by the consultants, Canadian Pacific re-developed the car-mile portion of depreciation on the basis of car miles of Canadian Pacific cars both on line and off line as was done in the case of repairs, to reflect the fact that the study traffic is not handled in foreign cars, and re-developed the car-day portion of depreciation on the basis of calendar car days which included idle time (Volume 66 - 11662). The cost of freight car depreciation on this basis was reported at Volume 66 - 11654.

Mr. Banks attempted to show that car days, or car ownership, does not vary with traffic volume and, accordingly, that the car-day portion of freight car depreciation should be treated as a constant cost. He tried to demonstrate that miles per car are increased in response to increases in traffic volume and this obviates the need for adjustment of the car fleet to changes in traffic volume. In attempting to support his position, he presented two charts based on Canadian Pacific freight car data covering the 35-year period 1924 - 1958. Chart I attempted to correlate intensity of use with traffic volume and Chart II attempted to correlate size of freight car fleet with traffic volume. Mr. Banks interpreted his charts as showing that a significant increase in traffic volume had been experienced during a period when the long-term trend was to shrinkage of the fleet, that is, to a decrease in freight car ownership (Volume 116 - 19275/9).

The cross-examination of Mr. Banks (Volume 130 - 22350-22371) in regard to his Charts I and II upon which is based his conclusion that investment in freight cars on Canadian Pacific is not related to traffic volume demonstrates that Mr. Banks did not understand either the relationships he was dealing with or the factors that made it impossible for him to develop a statistical relationship over time. The grouping of the data, the pattern of the residuals, and an awareness of railway technology, all clearly show that the statistical correlations attempted by Mr. Banks were invalid.

Manitoba/Alberta in Chart I failed to take into account the changes in technology such as freight train speed and improved construction of freight cars and gear which took place throughout the period of their analysis and which coincided with the increased trend of traffic. Manitoba/Alberta reached an erroneous conclusion by failing to recognize the import of the full technology factor.

In Chart II, it was inferred that because a substantial increase in traffic volume in the past 25 years had been associated with a reduction in size of the freight car fleet, there was no relation between traffic volume and size of freight car fleet. Examination of the data reveals that they are not homogeneous over time, but rather can be separated into three distinct periods. Within each of these sub-periods, the size of the freight car fleet in relation to freight car miles differed substantially. The type of analysis attempted by Manitoba/Alberta cannot be made (Volume 132 - 22577-82).

Furthermore, examination of the data shows that traffic volume on Canadian Pacific fell substantially from 1928 to 1933 and increased moderately thereafter until 1940. Throughout this period the freight car fleet of Canadian Pacific was in a process of downward adjustment (Volume 132 - 22579).

Thus, the charts presented by Manitoba/Alberta show that the adjustment in size of fleet cannot be achieved within one or two

years but that an adjustment can be made to significant changes in traffic volume in a reasonably short period of time.

An analysis was performed by Canadian Pacific of large U.S. railroads on a cross-section relationship between car fleet on-line and both net ton-miles and car-miles. In this type of analysis, both technology and time were held constant and therefore do not distort the analysis. The analysis proved that a high positive correlation exists between car ownership and traffic volume and confirms "the theory that car ownership and hence depreciation, is variable with traffic" (Volume 132 - 22581).

Cost of Money on Investment in Freight Cars -

Manitoba/Alberta use, in their cost presentation, car miles as the output unit in developing cost of money for freight cars whereas Canadian Pacific use car days. Mr. Banks agreed that the Canadian Pacific method was the usual costing procedure:

"Mr. Sinclair: . . . Under the usual costing procedures as used in the United States, investment in freight cars are developed on car days, do you agree with that ?

Mr. Banks: Yes."
(Volume 131 - 22462-3)

Transportation

Fuel and Crew Wages -

Mr. Stenason said that fuel and crew wages are directly traceable to the train runs over which the study traffic moved in the records of Canadian Pacific and they vary completely with the study traffic (Volume 18 - 2530). He explained that the costs of fuel and crew wages attributable to the study traffic were computed on the basis of gross ton miles of the study traffic, adjusted for the lower resistance arising from heavier loading of grain, to gross ton miles of all traffic on each train run, adjusted for resistance (Volume 18 - 2602-3).

It was suggested in Mr. Stenason's cross-examination that some train costs were not in fact 100% variable because some trains were run irrespective of the tonnage offered (Volume 67 - 11864).

The evidence of Mr. Stenason and Dr. Edwards on the point of variability of through trains was conclusive. The evidence shows that periodic reviews are made of scheduled trains on Canadian Pacific and they are adjusted to the volume of traffic. Also, between changes in timetables, scheduled trains are annulled for traffic reasons (Volume 67 - 11905). Evidence was also given to the effect that a study of wayfreight trains had indicated a high degree of flexibility in their adjustment to traffic volume. In this study, the adjustments made to the schedules of about 1,240 way freight trains in the last three years were examined (Volume 67 - 11865). In the light of this evidence it is not surprising that Manitoba/Alberta in their cost presentation used the fuel and crew wage unit costs computed by Canadian Pacific which are based on 100% variability of these expenses.

Yard Expenses -

Mr. Banks in his cost presentation has adopted the unit costs of Canadian Pacific for the computation of yard expenses. No disagreement exists in regard to these unit costs.

Train Other Expenses - Account 402 -

Train other expenses, account 402, attributable to the study traffic, were originally calculated by Canadian Pacific on the basis of System average unit costs. A test conducted on the direct freight and passenger expenses in this account showed that these expenses had been incorrectly recorded for the year 1958, and a re-statement was made in Volume 66 - 11654 to correct this error and reflect the unit costs of Prairie and Pacific Region Operations.

Mr. Banks said that the development of separate costs for the Prairie and Pacific regions produced certain anomalies in the data, and adopted for the Manitoba/Alberta cost presentation the system average method of expense apportionment originally used by Canadian Pacific for the computation of unit costs (Volume 116 - 19285).

Canadian Pacific did not accept Mr. Banks' calculation because of the error it contained but agreed at the Cost Conference to make a further analysis and recalculate the cost of train other expenses chargeable to the study traffic using System average unit costs (Volume 130 - 22282-3). The results of this recalculation were given (Volume 132 - 22598-99). The cost chargeable to grain on the revised method, exclusive of grain doors, was slightly higher than the figure in the Canadian Pacific cost study.

Grain door expenses in the Canadian Pacific study were based on the average of the expense incurred during the three-year period 1956 through 1958. Mr. Banks said that grain door expense closely reflected traffic volume in each year and used the 1958 actual grain door expense in his cost presentation (Volume 116 - 19285). In cross-examination, Mr. Stenason pointed out that the grain door cost should not be based on the expense of one year because the cycle in the life of grain doors is beyond a one-year period (Volume 69 - 12256). The inappropriateness of taking a one year cost for grain doors was also dealt with in the Canadian Pacific rebuttal evidence (Volume 132 - 22507).

Station Expenses -

Canadian Pacific employed multiple regression to analyze the behaviour of despatching and station expenses, and developed a unit cost per carload which was used to compute the variable cost attributable to grain. Mr. Stenason said that the results of the regression equation were confirmed by special field studies of station expenses in Western Canada (Volume 66 - 11751-2), adding that the expense found by means of regression was in fact a little less than the actual expense determined by the field study (Volume 66 - 11789). Counsel for Manitoba in cross-examination of Mr. Stenason advanced the proposition that carloads originated at stations were not a satisfactory explanatory variable for this type of expense, and made reference to applications by Canadian Pacific to the Board of Transport Commissioners for authority to

remove station agents in which he said no account is taken for carload traffic handled at the particular station being considered (Vol. 66 - 11759). This is not correct. In every application to the Board for removal of a station agent, a statement of carloads and earnings is furnished and an explanation given as to how the duties of the station agent with respect to carloads originated will be performed when the station is closed.

Manitoba/Alberta in their cost presentation developed dispatching and station expenses chargeable to the study traffic using gross ton miles as an explanatory variable in the regression. It is clear that gross ton miles, because of the distance factor it contains, cannot properly measure station and dispatching work. It is Canadian Pacific's position that gross ton miles is not a meaningful explanatory variable for tracing the variability of this category of expense. Dr. Borts made clear that his objection to the Canadian Pacific regression was based on the statistical insignificance (in his view) arising from the use of the carload independent variable, although he was prepared to accept LCL cars loaded. Further he acknowledged in cross-examination that gross ton miles on a subdivision where there is little traffic originating would distort the result under his equation. The final position of Dr. Borts on this group of expenses was stated in this way:

"Dr. Borts: There is a matter of judgment involved here, yes.

Mr. Sinclair: And so that certain tests may be applied to see whether that judgment is accurate, there would be tests on the ground looking at station work.

Dr. Borts: A station study might be one way of doing that."
(Vol. 123 - 20415)

Canadian Pacific did conduct station studies on the ground but Dr. Borts did not know of their result (Vol. 123 - 20411/2) when he made his analysis. The evidence of Mr. Stenason on the field studies on station expenses in Western Canada and of Mr. Emerson on the results of these studies made clear (Vol. 109 - 18206) the fact that carload traffic requires considerable time on the part of

station employees at stations of all sizes and therefore was a meaningful explanatory variable.

Loss and Damage -

Canadian Pacific originally calculated loss and damage for grain on the basis of the expense for the year 1958, and revised its calculation at Volume 66 - 11654 on the basis of the average for the three years 1956 through 1958 to make it consistent with the method followed in computing other cost elements and to reflect the fact that claims are often not settled in the year they arise.

Manitoba/Alberta used the 1958 costs in their cost presentation and gave as one of the reasons the fact that the Canadian Pacific loss and damage cost on a carload basis was about 50 percent above that experienced by Canadian National (Vol. 116 - 19287).

It was explained in evidence that the Canadian National figures included none of the clerical or overhead expenses related to freight claims while the Canadian Pacific figure did and therefore were not comparable (Vol. 68 - 12106). This was agreed to by Mr. Banks (Vol. 130 - 22283). The remaining difference between Manitoba/Alberta and Canadian Pacific was the use of one year rather than the average of three years for computing this expense. Canadian Pacific stated (Vol. 132 - 22508) that the three year average reflects a better claim experience than a one year figure. All claims cannot be cleared up in the year in which the loss and damage occurs.

Train Locomotive Supplies Train Enginehouse Expenses (Accounts 398 - 400) -

Canadian Pacific agreed (Vol. 123 - 20307) to undertake additional work in connection with analysis of accounts 398 - 400. This work has been done and is set forth in Volume 132 - 22605/6. The analysis showed an increase in the variable cost charged by Canadian Pacific of some \$193,000 could be justified.

Traffic, General, Communications (Rail), Rents and Taxes -

For the calculation of the variable cost of Traffic, General,

Communications (Rail), Rents and Taxes (other than Income Taxes) chargeable to grain moving at statutory rates, Canadian Pacific determined through special studies the amount of expense in these accounts which is related to freight service. The percentage relationship that this amount was to the balance of total railway expenses (excluding those attributable to passenger service) was computed and this ratio was applied to the variable cost of the study traffic (Vol. 18 - 2614/5).

The method used by Canadian Pacific determined the variable cost of this group of expenses which were found to have the same variability as railway expenses as a whole. Mr. Stenason said that the variability of Traffic and General expenses was tested over a period of the last ten or twelve years for Canadian Pacific by examining their relationship to other railway expenses and that the degree of variability was explained by the fact that they have many features in common with total operating expenses and approximately half of these expenses reflect labour charges (Vol. 69 - 12343).

In his cross-examination of Mr. Stenason, counsel for Manitoba took the dollar amount of Traffic and General charged to grain as a percentage of total Traffic and General related to freight service, which gave a percentage of 11.82%. He then proceeded to apply this percentage to each of the primary accounts making up Traffic and General and suggested that the dollar amounts so arrived at as the amounts in each primary account chargeable to grain were unrealistic. Mr. Stenason pointed out that Traffic and General expenses were allocated to the study traffic as a group, that he apportioned the total and not the parts individually (Vol. 66 - 11728). He said that to break down the expenses on an individual primary account basis as counsel for Manitoba had done was statistically invalid (Vol. 66 - 11725). Mr. Stenason said that the study traffic might be carrying a greater share of one of the individual accounts than of the other as, for example, clerical expenses (Vol. 66 - 11726/9). He explained the extensive clerical expense involved in the movement of grain in

processing station accounts, and in the work done by the Transportation Department (Volume 67 - 11954). Dr. Edwards said that the allocation of the total amount of Traffic and General to grain had been made on a recognized basis and resulted in a proper distribution of the expenses to the study traffic (Volume 19 - 2722).

With regard to Traffic expenses, Mr. Banks stated that the allocation method used by Canadian Pacific was adopted simply because available data do not lend themselves to more refined techniques and, suggested certain normal traffic department activities were not necessary in the case of statutory grain traffic. Manitoba/Alberta in its cost presentation allocated traffic expenses to grain on the ratio of grain revenue to total system freight revenue. Mr. Banks recognized his method was " . . . an unusual apportionment method" (Volume 116 - 19295).

It is the position of Canadian Pacific that Mr. Banks' method of apportioning Traffic expenses is not only an unusual method, but an incorrect method. The purpose of the cost study is to test the reasonableness of the grain rates and it is, therefore, wrong in determining costs for testing them to use the revenue produced by those rates which are acknowledged by all to be suspiciously low and in the view of the railways are far below a compensatory level (Volume 132 - 22601).

Mr. Banks objected to the cost of Communications (Rail) included in the Canadian Pacific study because, in his opinion, the train-hour basis used in the separation of freight and passenger tends to place an unduly heavy burden on the freight service since this basis implies that the paramount use of communications is for control of train operations. In the Manitoba/Alberta cost presentation Mr. Banks adopted data reflecting U.S. rail experience in 1958 for the separation of Communications (Rail) expenses (Volume 116 - 19294) between freight and passenger service.

In Volume 132, page 22603 Canadian Pacific recorded the basis of its disagreement with the treatment of Manitoba/Alberta.

First, Manitoba/Alberta applied the percentage apportionment of rail communication expenses as found for U.S. Class I railroads in 1958 to the rail communication expenses of Canadian Pacific. This assumes that the relative position of freight and passenger service on Canadian Pacific and need for communications was the same as for the average Class I U.S. railroad in 1958. This is obviously incorrect. Furthermore, passenger service on Canadian Pacific is incremental and it is therefore wrong to associate constant costs with this service.

The variability of taxes other than income taxes was the subject of cross-examination by Counsel for Alberta. Manitoba/Alberta in its cost presentation allocated to the variable cost of grain payroll taxes on the basis of pensions, and sales taxes on an expense overhead basis. The full cost of property taxes on solely related lines was charged to grain but other property taxes were assumed to be constant (Volume 116 - 19235/6).

Canadian Pacific submitted (Volume 132 - 22509/11) that property taxes on right-of-way may have a long term variability equal to that of railway expenses as a whole but treated these taxes as constant. It was shown that if business and water taxes were assumed to be variable to the same extent as railway property investment, and right-of-way taxes, exclusive of those on solely related lines, were assumed to be constant, a variable cost for taxes only \$67,000 lower than that included in the study by Canadian Pacific would result.

Areas of conservatism.

Canadian Pacific stated that its determination of the cost of handling grain to export positions in Western Canada was on a conservative basis. During his examination of Dr. Edwards, Counsel for the Commission, Mr. Cumming, asked Dr. Edwards (Volume 74 - 13009) to "catalogue the main areas in respect of which you say these studies are conservative and perhaps give some rough idea of the amounts that may be involved".

The main items in the evidence on this point may be summarized as follows:

- Treatment of non-revenue freight. Canadian Pacific reflected the movement of non-revenue freight by increasing the transportation units by the ratio of the non-revenue ton miles to revenue ton miles. Dr. Edwards pointed out that if the non-revenue freight expense had been apportioned on a gross ton mile basis, as is the usual practice, the variable costs would have been some \$175,000 higher.
- Locomotive repair expenses. These expenses were treated by Canadian Pacific on a locomotive mile basis rather than a unit mile basis. As there is a higher proportion of unit miles per locomotive mile in the West than in the East, there was an understatement of some \$100,000 in the variable costs as developed by Canadian Pacific.
- The failure to allow for detours in the handling of the grain traffic and the degree of circuitry in actual operation led to a variable cost understatement of some \$80,000.
- An understatement of switching time for the handling of local cars of grain at intermediate terminals amounting to \$34,000.
- The failure to allow for the fact that the age of diesels on Canadian Pacific is well below the long-term average age, leading to abnormally low maintenance costs, produces an understatement of some \$233,000.
- There was no allowance for increased wage rates effective in 1959. If the wage increases in 1959 had been applied to the labour costs in the grain study, these costs would have increased by some \$1,100,000.
- There was no recognition of the fact that in 1959 the corporate income tax rate increased from 47% to 50%, which would have had the effect of increasing the cost of money by some \$680,000.

- There was no allowance for the increase in sales tax on materials and supplies which became effective in 1959. This would have increased the variable costs by some \$78,000.

The above noted understatements in variable costs amount to some \$2½ million.

Dr. Edwards pointed out that the conservative method adopted in apportioning the constant costs to the export grain traffic led to an understatement of some \$11 million in constant costs.

Dr. Edwards also pointed out that there were other areas of conservatism to which he could not attach a dollar cost but which he felt were important. He mentioned that no heavy repairs were performed on steam engines on the Canadian Pacific in 1958. Furthermore, no effect was given to the fact that the heavy loading grain causes more wear and tear and damage to the freight cars than the average traffic. Again no account was taken of the increase in Unemployment Insurance in 1959.

Dr. Edwards noted (Volume 73 - 13000-4) that the railways had treated certain accounts having some variability as constant and made specific reference to the removal of snow, ice and sand which involved an amount of some significance. Dr. Edwards also made specific reference to the fact that Canadian Pacific had not charged to the variable cost of study traffic the excess box car capacity required because of the peaking requirements of the grain trade. Dr. Edwards said there would be an added cost because of the peaking factor and the point was summarized in this way:

"Mr. Cumming: Now, my question then is: would there be any basis, any justification, in your view, for charging the full cost of that excess capacity required because of peaking considerations of the grain trade ?

Dr. Edwards: I think it might well be.

Mr. Cumming: What sort of an impact would it have on the result of this study ?

Dr. Edwards: . . . there would be an added cost because of that peaking factor.

Mr. Cumming: And in your opinion, Dr. Edwards, do you think that that might be properly done and, in doing so, would it be consistent, in a proper cost analysis of this traffic ?

Dr. Edwards: I think it would be.

Mr. Cumming: And so I suppose to that extent the study once again is on the conservative side ?

Dr. Edwards: That is correct".
(Volume 73 - 12984).

Another area of conservatism is the fact that Canadian Pacific did not attribute to grain any cost for working capital. That a substantial amount of working capital is required to handle over one-quarter of the total freight transportation of Canadian Pacific is obvious. That an allowance for the cost of working capital is an appropriate cost was acknowledged by Mr. Saunders:

"Mr. Sinclair: In the Canadian Pacific cost study did you note any conservative element with respect to the treatment of working capital ?

Mr. Saunders: I do not recall:
(Volume 128 - 22152)

Mr. Sinclair: . . . I am going to ask you this: that as a cost analyst it is your practice to apply to a section of the study traffic a proportion of working capital ?

Mr. Saunders: Yes, I think that is generally a proper allowance".
(Volume 128 - 22153)

Mr. Sinclair: A bigger percentage of the overall required working capital of the corporation would be applicable depending on the amount of the traffic that is being studied ?

Mr. Saunders: Yes. Big traffic, big working capital; little traffic, little working capital. That is what you are saying".
(Volume 128 - 22154)

Summary of Cost Study

The intensive cost study which was conducted by Canadian Pacific showed that for the year 1958, which was a representative year, the cost of moving grain and grain products to export positions in Western Canada at statutory rates was substantially greater than the revenues received, and that the limitations and obligations of the statutory grain rates were creating a substantial burden. That the movement of grain and grain products to export positions in Western Canada is not compensatory, and the magnitude of the burden,

is shown by the comparison of revenues and costs at the variable and total levels as developed in the Canadian Pacific cost study. This is summarized in the following table.

Revenues	\$35,400,000	
Variable Cost	<u>51,700,000</u>	
Shortfall on Variable Cost:		<u>\$16,300,000</u>
Revenues	\$35,400,000	
Total Cost	<u>71,800,000</u>	
Shortfall on Total Cost:		<u>\$36,400,000</u>

At the commencement of its rebuttal evidence, Canadian Pacific (Volume 132 - 22497/8) discussed costing techniques and the use of costing. In this evidence, it is stated:

"... Cost studies have been used for many years in both rate and service applications before the Interstate Commerce Commission and before the Board of Transport Commissioners. Mr. Saunders, representing the Grain Handling Organizations, agrees that the Interstate Commerce Commission depends upon costs to determine rate levels (Volume 127 - 22010) and that cost finding is 'a very important necessary thing today'. (Volume 127 - 22014).

Studies much less precise and detailed than those presented by the railways to this Commission have been used by the Interstate Commerce Commission and other regulatory tribunals 'to judge the compensatoriness and service requirements of hundreds of millions of dollars worth of transportation' (Volume 130 - 22297). Less detailed studies have also been used and acted upon by the Board of Transport Commissioners in important rate and service cases".

The position of Canadian Pacific in regard to the role of cost studies in rate determinations is summarized by the following (Volume 130 - 22314/5):

"Mr. Sinclair: Yes, but Mr. Banks what I am suggesting to you is this: that the cost analyst, having been placed in an independent position as an advisor to the tribunal, like the cost finding section of the tribunal, like

the Board of Transport Commissioners or the cost finding section of the Interstate Commerce Commission, or a technical advisor, can arrive at a cost for moving a given segment of traffic that in so far as is reasonable it becomes the cost. You would agree with that ?

Mr. Banks: May I restate it, sir ?

I think we are not very far apart on this one, but my restatement would be that in a particular rate-making situation a number is used as the cost with full recognition that it is not the cost in the abstract sense of the word 'the'.

Mr. Sinclair: But, being reasonable men and having a job to do, it is the cost for the purpose and can be so accepted ?

Mr. Banks: It is a cost that is used for a particular public purpose, yes, sir.

The Chairman: Is it taken as such ?

The Witness: I am not sure that I understand you.

Mr. Sinclair: I think the Chairman's question to you is that the determination is taken as the cost.

The Witness: Yes, sir."

Knowledge of railway operations and observations over the years indicate an area of reasonableness for the cost of moving traffic. The use of cost finding techniques sharpens the appreciation that experience and knowledge give. The application of the more advanced techniques used by the railways in the cost study presented to the Commission has resulted in a greater ability to trace expenses more accurately.

Because of the wide use of the costing techniques of the Cost Finding Section of the Interstate Commerce Commission in many rate determinations in the United States, it is of interest to compare the percent of variability as developed in the Canadian Pacific cost study with the percent of variability under the I.C.C. procedures. These are as follows:

Operating Expenses, Rents and Taxes

Canadian Pacific Cost Study	-	77%
I.C.C. Cost Finding Procedure	-	80% to 90%

Road Property Investment

Canadian Pacific Cost Study	-	40%
I.C.C. Cost Finding Procedure	-	50%

Equipment Investment

Both Canadian Pacific Cost Study and I.C.C. Cost Finding Procedure	-	100%
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It is clear that in determining the proportion of constant cost to be attributable to a segment of traffic, refined procedures are not available. The fact that the costs being dealt with at this stage of the study are constant, that is, they have not been traced, indicates that a general statistical approach is the only method which can be followed. The method generally adopted in the United States and in Canada is the ton and ton mile basis. Canadian Pacific adopted the more conservative approach which allocated constant costs to grain on the basis of the proportion that the variable cost of grain bears to the total variable cost of all freight traffic on the System. In appraising the allocation of constant costs to grain, the question is - is the method that Canadian Pacific used a reasonable method in the light of the circumstances? It is the position of Canadian Pacific that its method was reasonable and conservative.

It is the position of Canadian Pacific that the cost study it has presented to the Commission may be relied upon with confidence to determine the cost of moving grain and grain products to export positions in Western Canada. Canadian Pacific is confident that its cost study appraised and evaluated by the Commission and its independent technical advisers enables the Commission to determine the cost of moving grain and grain products to export positions in Western Canada.

A considerable discussion developed in the proceedings before the Commission as to the proper proportion of constant cost which the proposed level of rates for statutory grain traffic should bear.

It is clear on the evidence given by Mr. Roberts and Dr. Edwards that the rate was based on economic and traffic considerations, and cost was considered for testing purposes. Both these witnesses pointed out that in considering cost for test purposes it must be kept in mind that grain and grain products represent a substantial proportion of freight traffic in Western Canada and of total system traffic.

Mr. Roberts said:

"Proposed rates to be just and reasonable must meet the variable cost and something more. The 'something more' is dependent upon numerous factors as has already been explained including the fact that this plus factor over variable cost must carry a fair proportion of constant costs.

"The movement of grain from Western Canada to export positions is the largest single job the railways do. In 1958, it accounted for over 40% of the total freight transportation service of Canadian Pacific in Western Canada and was over 26% of all freight transportation service produced throughout the entire Canadian Pacific system.

"In view of the large volume of western grain moving to export positions in relation to total traffic, it is apparent that unless a substantial burden were to be placed on other traffic or on the railways, the just and reasonable level must meet the total cost of transporting the grain traffic.

.....
 "There is no justification for the basic traffic of a plant being priced on an incremental basis. No one can seriously suggest that grain traffic in Western Canada bears any resemblance to a mere increment, that is that other traffic provides the basic volume and that grain traffic is incremental. Therefore, for this reason also, western grain traffic should pay rates which meet the total cost."

(Vol. 24 - 3408/09; 3413).

Dr. Edwards said that grain and grain products moving at statutory and related rates constituted 42.2% of the revenue ton miles of traffic handled by Canadian Pacific in Western Canada in 1958 (Vol. 19 - 2646) and that under recognized rate making principles, a just and reasonable level of rates for the

transportation of such a segment of rail traffic must include a fair proportion of constant cost (Vol. 19 - 2647). Mr. Edsforth said the same thing (Vol. 13 - 1749). The point all these witnesses emphasized was that if the level of rates set for statutory grain traffic did not recover full cost, there would be a burden placed on other traffic or the railways. Dr. Edwards made it clear in his evidence that he would never advise anyone to say automatically that the rate should be fully distributed cost, but he said that in view of the considerations which Mr. J.M. Roberts had set out, he would recommend that the rate on statutory grain be set at close to fully distributed costs (Vol. 72 - 12775; Vol. 73 - 12926).

Counsel for the Province of Alberta suggested that statutory grain traffic should not be charged with what he described as fully distributed costs. The total cost of moving statutory grain as contained in the evidence submitted by Canadian Pacific cannot be described as "fully distributed costs" as that concept is generally developed. This is because, firstly, the proportion of constant cost attributable to the statutory grain traffic was computed on the ratio of the variable cost of grain to total freight variable cost and not on the ton and ton-mile basis, as is done in most studies in the United States; under I.C.C. cost finding; and in cost studies done by Canadian Pacific for other traffic (as to I.C.C. basis, see Vol. 19 - 2758, and as to Canadian Pacific basis in other cost studies, see Vol. 68 - 12028); and secondly, the proportion of constant cost allocated to the statutory grain traffic did not include anything for the passenger deficit as is done in United States cost studies (Vol. 19 - 2757) and by Canadian Pacific in making cost studies on other traffic (Vol. 68 - 12028). The fact that the total cost of the statutory grain traffic as given in evidence by Canadian Pacific was not fully distributed cost as that concept is developed was emphasized again and again by Canadian Pacific witnesses and, in particular, by Dr. Edwards.

Counsel for Manitoba and Alberta attempted to establish that Canadian Pacific was merely asking that the statutory grain rate level be determined on fully distributed cost.

The approach of Alberta and the position of Canadian Pacific is clearly seen from the following:

"Mr. Frawley: Surely I am not wrong in putting to you that they are wanting fully distributed cost for this grain.

"Dr. Edwards: They are wanting what they justified to be a proper rate under economic considerations. Now, that is very close to full cost, slightly below. If they only wanted full costs, Mr. Frawley, they would not have gone to the effort to evaluate the rate making considerations, the increases in rates that were applied to other traffic over this period of years as set out, so that they would only have said to these two gentlemen: 'Fine; full cost, and that is our rate.' Now, you are trying to indicate that that was the sole purpose of this rate proposal.

"Mr. Frawley: I certainly am. Let's have no misunderstanding about what I am putting to you.

"Dr. Edwards: And I am putting to you that that is not the basis, so we are poles apart."
(Vol. 72 - 12845/6).

Dr. Edwards' evidence was that the rates were not based on fully distributed costs as the test, but that while total cost was looked at, the level was based on economic and traffic considerations (Vol. 72 - 12841 and Vol. 72 - 12771).

Mr. J. M. Roberts made it clear that his proposed level for a just and reasonable rate for grain was not made on cost but only after testing all of the relevant circumstances including cost in order to put the rates on a reasonable level and so that they could take their proper place in the freight rate structure (Vol. 28 - 4174).

When Mr. Roberts was being cross-examined by Mr. Blair, the following exchange took place:

"Mr. Blair: Mr. Chairman, I asked the witness why, in fixing these new rates, he considers it important to fit them into a proper place in the freight rate structure rather than simply to have regard to the cost.

"Mr. Roberts: Well, we are not making rates on cost, Mr. Blair. This is what we consider to be, after testing all of the circumstances, a fair and reasonable level of rates.

"Mr. Blair: So that the rate which you have suggested here has more to it than the element of recouping your cost in moving the grain ?

"Mr. Roberts: It is putting the rates on a reasonable level in the freight rate structure at the present time.
(Vol. 28 -- 4174).

Canadian Pacific Proposed Solution to the Statutory Grain Rate Problem

The evidence given by Canadian Pacific demonstrates that the statutory rates on grain fall far short of being at a just and reasonable level. It is clear that the statutory grain traffic is not remunerative traffic and imposes a substantial burden. Indeed the evidence demonstrates that the statutory rates are much below variable costs and far below the level which they would require to be on if they were not to create a burden. This burden Canadian Pacific has shown to be some \$36 million annually, a burden which Canadian Pacific and other traffic cannot carry. It is equally clear that a just and reasonable level requires a 100% increase in the statutory grain rates - a rate level Western Canada farmers cannot afford to pay without hardship. What then is the solution?

One solution would be to simply increase the rates to the proposed level. There was some suggestion that this would be ineffective because the western farmers could not pay the increased rates and the grain would not move. Mr. Emerson did not agree:

"Commissioner Mann: In other words, even if you were free today to raise the rates on grain moving to export positions, you could not do so?

"Mr. Emerson: We could not do so?

"Commissioner Mann: No. Economically?

"Mr. Emerson: Well, I think you could do so. It would certainly bring about some economic dislocations. Perhaps, in that sense, the situation with which we are faced is this, that over, now, a very long period of time these rates have been fixed in relatively their present quantity. And, of course, in that period of time costs have increased, and you have a gap that is widening.

"Now, whether we could go back and retrace history, as it were, and have the rates move up in conjunction with costs, and keeping their place in a proper relationship to the rate structure, the dislocations or changes, whatever might have taken place, would have occurred gradually.

"Commissioner Mann: But, as we have it today in 1960, and looking forward to, say, 1966 -- or, the end of 1965; I suppose we should take a five year period for ease of discussion -- if you dealt with the matter in its present context on the assumption that bygones are bygones, and you cannot do anything about them, it would be virtually impossible for your company to raise the rates to what you consider their just and reasonable level, because of the things you have outlined to us?

"Mr. Emerson: I do not think it would be impossible, sir. It would bring about, certainly, dislocation. In that respect, of course, the problem we are faced with here is one that has built up over the years as a result of the time lag, as it were." (Vol. 115 - 18968/9).

In cross-examination of Dr. Edwards by Mr. Frawley the following evidence was given:

"Mr. Frawley: Why don't you assume the opposite, Dr. Edwards? Just leave it to the farmer out there to pay the rate. Make the proper rate that the farmer is willing to pay.

"I would like you to assist the commission and I would like to ask you as to what the rate would be, if, for example the Governor-in-Council should tell us today: 'We are not going to contribute anything to help move grain in western Canada,' and see what your opinion would be as to what the rates should be, just for the sake of answering my question. Just assume that there will be no contribution from the federal government." (Vol. 72 - 12800).

"Dr. Edwards: Well, under that set of conditions, Mr. Frawley, I would judge that normal rate making and market factors would apply ----

"Mr. Frawley: Normal rate making?

"Dr. Edwards: Rate making and market factors would apply as they affect the making of the railroad prices. Out-of-pocket costs on this traffic is somewhere in the neighbourhood of 7½ mills a ton mile. The traffic is a very large portion of the whole. I would believe that if I were the traffic manager of these railroads and had the evidence before me that I now have and followed the usual considerations of trying to make the maximum contribution to my burden, that I would contemplate a rate somewhere in the neighbourhood of one cent per ton mile as is now done. I would contemplate that there would be possibly some loss in traffic; there would be, no doubt, some hardship upon the shippers that does not now exist in bearing that rate. There must be some play around that present level, a mill or so, but I would certainly want to recover some significant margin above my out-of-pocket costs to meet the share of the burden of the constant cost. You could lose a substantial amount of grain traffic and still be better off at one cent a ton mile than you are at half a cent a ton mile, losing some \$17 million out-of-pocket. So that those are the factors if we get down to, let's say a fair conception of this problem.

"It is conceivable that that situation should exist. The government might find some other additional or other method of giving relief to the farmers if hardship resulted, but it is the rate maker or price fixer who is responsible for the recovery of revenue requirements. I would be working within fairly sharp limitations myself."
(Vol. 72 - 12804/05).

When being cross-examined by Mr. Cumming, Dr. Edwards said that he was sure that the grain would continue to move if the rate was increased to the proposed level (Vol. 73 - 12923).

Mr. Brownlee, the President of United Grain Growers Limited, also agreed that the grain would move:

"Mr. Sinclair: And the traffic would still move at a higher rate. There is evidence before this Commission maybe not in the same volume but it would move with considerable hardship on a segment -- well, the farmers of Western Canada

"Mr. Brownlee: That is possible. The western farmer is in this position, in Saskatchewan, there is only one thing he can do, he must raise the grain for export or get out of business. Therefore I assume that if the rates were increased of necessity grain would still move but it would be a great hardship to the farmer.

"Mr. Sinclair: That was the position as set forth in the brief of the Canadian Pacific and also the evidence given on behalf of both railways by Dr. Edwards."
(Vol. 81 - 14290).

The evidence of all these witnesses is to the same effect, namely, that while the grain would continue to move the proposed level of rates would work a hardship on the farmers and would possibly drive some marginal farmers out of the business of growing grain.

Assuming that the rates to be paid by the farmers were not to be fixed by statute but were to be treated as all other rates and go to a just and reasonable level, it is clear that the railways either in one step or at the most two steps within a very short period, would be in a position to raise the rates to the level of a cent per ton mile. By a short period is meant not more than a few months to take care of firm commitments based on an entirely different set of circumstances.

That Parliament considers a just and reasonable level of rates on grain moving to export positions in Western Canada paid by farmers would cause hardship and dislocation is abundantly clear from the fact that the rates have remained fixed notwithstanding the strong pressures of increased transportation costs which have been so marked in the last 15 years. If Parliament did decide to repeal the provisions of the Railway Act fixing the statutory grain rate, it necessarily would mean that it was the assessment of Parliament that hardships on the grain growing community of Western Canada would not arise, that sociological and other dislocations would not take place or that Parliament was going to look after hardships and dislocations that would arise in some other way.

It is the position of Canadian Pacific that a realistic solution must be adopted. There can be no doubt that on the one hand, the statutory rate is not compensatory, much less remunerative, and that a substantial burden is being borne. On the other hand, the western farmer is in a position where he is competing, in effect, with the governments of other countries.

Dr. Edwards' evidence was that the effect on the shipping farmer and the additional hardship he would endure if there was no element of assistance had been appreciated and for this reason the proposal took the form that it had, namely, that the rate to the farmers was not to be changed (Vol. 73 - 12917). He said that the proposal introduced considerations of welfare economics (Vol. 73 - 12912) and such considerations as world competition and government support programmes, particularly in the United States (Vol. 73 - 12920/1).

Dr. Edwards said:

"... I do not like to use strong language, but I feel in a sense outraged that any private company in the economy should be asked to give out in a large, tremendous area of western Canada, some 45 per cent of all its services at the rates of 1899. I never heard of such a thing.

.....
 "It seems to me perfectly irrational that in the dilemma which is not the fault of farmers and not the fault of the railroads, it has world-wide implications, international implications and has created in the United States

"tremendous problems, politically, monetarily and otherwise, that the pressure should be all focused on a private company."
(Vol. 72 - 12784).

Mr. Crump said:

"Canadian Pacific is well aware of the problems involved in the export of Western Canadian grain. The sale of grain in international markets involves factors which are beyond the control of the farmer and the sale price for export grain must remain competitive. Until there is a marked change in the situation, the Canadian farmer cannot, without hardship, pay out of the sale price of grain, a just and reasonable rate for moving grain and grain products to export positions."
(Vol. 26 - 3800).

It is clear, therefore, the under the railways' proposal national economic policy has been recognized.

It is national economic policy of Canada to ensure that the present western grain economy be maintained without undue hardship or dislocation and that the grain be produced on the Prairies and reach export positions.

In the light of all the circumstances, it is not the proposed solution of the railways that the farmers should pay a just and reasonable level of rates on grain moving to export positions in Western Canada but that the farmers should continue to pay only the low statutory grain rate level, and the difference would be the responsibility of the federal Government.

There is, however, a distinct difference between Canadian Pacific and Canadian National as to the manner in which the railways should receive a just and reasonable level of rates on statutory grain. The Canadian Pacific proposal will be found in the Canadian Pacific submission dated October 14, 1959, and filed as Exhibit 47, commencing at page 19, and in the evidence of Mr. Crump (Vol. 26 - 3799).

The specific proposal of Canadian Pacific is one related to federal income tax and would involve the addition of a new section to the Railway Act to be numbered Section 328A, reading as follows:

"(1) Notwithstanding anything contained in the Income Tax Act, railway companies which are subject to Section 328 (6) of the Railway Act may deduct from income tax otherwise payable for the taxation year, computed in accordance with the provisions of the Income Tax Act, an amount equal to the difference between:

(a) gross revenues received in the taxation year for transporting grain and grain products at the rate level prescribed in Section 328 (6) of the Railway Act, and (b) gross revenues which would have been received if the said traffic had been moved at an increase of 100% over the said prescribed statutory level or at such level as the Board of Transport Commissioners may subsequently determine and change and alter as changing conditions or cost of transportation may from time to time require; such difference, however, to be reduced by subtracting therefrom the amount arrived at by applying thereto whatever rate of income tax is applicable in the taxation year. The amount of the deduction from income tax so calculated to be certified by the Board of Transport Commissioners.

"(2) If in any taxation year the amount which a railway company is entitled to deduct under subsection (1) of this section should exceed the total tax otherwise payable, such excess may be deducted from the tax otherwise payable in the preceding taxation year or in the five taxation years following the taxation year."

(Section 328A)

(Paragraph 79 on page 25 of Exhibit 47).

In effect, Canadian Pacific proposes that it be given a credit against federal income tax otherwise payable of an amount equal to the difference between the gross revenues which it receives in any taxation year from the transportation of statutory grain at the statutory rates and the gross revenues which it would receive if such traffic had been carried at the level of rates proposed (i.e., an increase of 100% over the present rates) less income tax on such difference.

Under proposed Section 328A, the Board of Transport Commissioners is given authority to change and alter the level of rates on statutory grain as changing conditions or cost of transportation may from time to time require.

Provision is made in the proposed section that if in any year the amount which the railway company is entitled to deduct from federal income tax exceeds the tax otherwise payable, then the amount

of the excess may be deducted from the tax otherwise payable in the preceding taxation year or in the five taxation years following the particular year involved. This is in accordance with established income tax practice in regard to shortfalls in any year.

It is not without significance that although Mr. Brownlee on behalf of the United Grain Growers did not find the Canadian Pacific proposal satisfactory, nevertheless he did indicate the possibility of alleviating burdens on the railway did exist through use of income tax.

Canadian Pacific recognized that its proposal would not benefit Canadian National until it is in a taxable position. Consequently, it was proposed that a railway company which did not have taxable income could elect to receive the amount of the permissible deduction from income tax by way of a special credit or cash.

Canadian National propose that the difference between the revenues received by the railways at the present level of rates for statutory grain and the revenues which would be received if these rates were increased by 100% or at whatever level the Board of Transport Commissioners might thereafter determine as just and reasonable, be paid directly to the railways. Canadian National took exception to the proposal of Canadian Pacific that the payment take the form of a deduction from income tax. Mr. Donald Gordon's statement with respect to this is found in Volume 11, pages 1358 to 1366. Mr. Crump gave the views of the Canadian Pacific in regard to this objection of Canadian National and the Canadian Pacific position will be found in Volume 26, pages 3825 to 3831.

The difference between Canadian National and Canadian Pacific with respect to this matter can be stated very simply: Canadian National wishes to receive the full difference between the present level of statutory rates and the revenues that would be received if the proposed level of rates was put into effect. Canadian Pacific's position is that the method adopted to provide the proposed freight rate assistance to Western farmers should be one which measures the true

dollar amount of the assistance from the national treasury, such an amount is the difference between revenues at the present level of statutory rates and revenues which would be received at the proposed level of rates after deduction of income tax.

It should be noted that Canadian National in developing the cost of moving grain to export positions in Western Canada proceeded on the basis that income tax would be payable on the revenues received from the movement of the traffic.

In explaining the position of Canadian Pacific, Mr. Crump said:

"Canadian National certainly is not entitled to a dollar more than the Canadian Pacific for moving a car of grain a similar distance to export positions in Western Canada. The fact that Canadian Pacific is taxable and must remain so should not be allowed to be used by its competitor to the end that its competitor would receive in effect two dollars for every dollar received by Canadian Pacific on the largest single segment of railway traffic."
(Vol. 26 - 3829/30).

Canadian Pacific carries some 55% of the grain crop to export positions in Western Canada as against 45% carried by Canadian National (Vol. 26 - 3815). The transportation of grain represents the largest single transportation job the railways do. If the proposal of Canadian National were to be accepted, Canadian Pacific would actually end up, after the payment of all costs including income tax, with substantially less money than would Canadian National. Any solution must recognize that the statutory grain traffic is a much more substantial burden on Canadian Pacific than on Canadian National although it is a major burden on both.

It has been emphasized elsewhere that it is not disputed that financially sound railways are essential to the economic well-being of Canada and this is one important aspect in which the competitive position between these two roads can be maintained by giving recognition to the fact that Canadian Pacific operates at a profit and must do so.

There appears to be some misunderstanding of the Canadian Pacific proposal by the Grain Handling Organizations and other farmer groups. For example, Mr. Brownlee, for United Grain Growers, said:

"To provide relief in the manner suggested by the railways would require action by Parliament not only in the first instance but also by repeated votes of funds. Each such occasion would give rise to reproach against the grain producers of the prairies and each would bring into jeopardy the freight rates essential to the grain growing industry of the prairies."
(Vol. 81 - 14190).

This would not apply to the Canadian Pacific proposal as it is based on a deduction from income tax and does not involve votes of funds, repeated or otherwise. Under the Canadian Pacific proposal, if Canadian National is in a deficit position, the amount of special credit or cash to which it would be entitled would be provided for by counter-accounting in the departmental estimates.

When Canadian National has taxable income, it would be in the same position as Canadian Pacific, thus there would be no recurring occasion which would "give rise to reproach against the grain producers".

Moreover, nothing can be more clear than that the rate to the farmer is not to be changed. The fear of farm organizations and the Grain Handling Organizations that this might happen is completely groundless. This has been emphasized time and again by the Prime Minister and other ministers of the Crown.

On January 19, 1959, Prime Minister Diefenbaker, on speaking on the speech from the throne, said:

"As far as the Crowsnest Pass rates are concerned, from the time that I was a boy in western Canada in 1903 and all through the years those rates have been regarded as the Magna Carta of western rights. Those rights shall not be interfered with to the detriment in any way of western agriculture or western people in general."
(House of Commons Debates, January 19, 1959, page 64).

In the debate on the extension of the Freight Rates Reduction Act, the Hon. George Hees, then Minister of Transport, said:

"I believe that when this bill was introduced last year the Prime Minister was asked the very same question. (i.e. the government's position regarding Crow's Nest rates). He gave the house an assurance that the Crowsnest pass rates would not be tampered with, and when the Prime Minister gives an assurance that assurance stands."

"I said that a year ago the Prime Minister stated in this house that the Crowsnest rates would not be tampered with, and when the leader of this party makes a statement, that statement stands."

"The Prime Minister said they will not be tampered with, and they will not be tampered with."

(House of Commons Debates, June 28, 1960, page 5483).

It would be difficult to secure a more complete reassurance than the foregoing that the statutory rates on grain will be maintained insofar as payment by farmers is concerned.

The Commission will have noted that the Canadian Pacific proposal is limited to railway companies. This is because at the present time, and for the foreseeable future, railway companies will be the only feasible method of transporting grain to export positions in Western Canada. In addition, under the Railway Act, the Canada Grain Act and other statutes, statutory obligations and limitations of a far reaching nature are imposed on railway companies with respect to the movement of grain to export positions in Western Canada. For example, under Section 321 of the Railway Act, the Board has wide powers to require railway companies to furnish all facilities within their powers for the carriage of such grain. Similarly, railway companies are prevented from charging demurrage on cars of grain awaiting unloading at the Lakeshead and Pacific Coast ports. Such obligations and limitations apply only to railways.

It is for these reasons that the Canadian Pacific proposal is limited to railways.

In its submission, Canadian Trucking Associations Inc.

said:

"It is our hope that if the Commission considers it advisable to recommend to the government a subsidy for the movement of grain at statutory

"rates, it will do so in a manner that will not prejudice the opportunity of competitive growth by truck transport as compared with rail transport. It is our suggestion that if you decide to recommend a measure of relief such as the railways are proposing in regard to the Crowsnest Pass Rates, any subsidy should be paid directly to the shipper who, in this case, is primarily the Canadian Wheat Board or its agents; that the shipper should be free to select the carrier he will use to carry freight, and that freight rates for grain be permitted to move to a just and reasonable level as may be determined by the usual procedures of railway rate making." (Vol. 59 - 10621).

Canadian Trucking Associations Inc. was frank in agreeing that trucks do not presently carry grain moving at the statutory rates. The Association said:

"Trucks do not carry export grain moving under the 1899 rate levels because the rates for this traffic are below the level at which it is economic for trucking firms to enter into competition with the railways." (Vol. 59 - 10620).

When being queried by Mr. Cooper as to what level of rates would attract truckers, Mr. George Montague made this reply:

"Mr. Montague: Well, I don't think I am capable of answering and saying that at any particular point this traffic will occur. Certainly, as soon as the rate got to a level at which it would attract truckers, and there is freedom for them to get into it, they would get into it.

"Mr. Cooper: You couldn't tell what that level would be?

"Mr. Montague: No, I don't believe I could. I think it would be impossible to state."

(Vol. 60 - 10891).

Although Canadian Trucking Associations was anxious that any subsidy that might be payable in respect to statutory grain traffic be available to truckers, it was not as eager to assume the obligations and limitations presently on railways with respect to the transportation of such traffic. Mr. Montague said this:

"Mr. Montague: Well, we got very briefly into this discussion the other day, and we have to admit that at the present time in the process of bringing the prairie grain to market there are certain conditions imposed on the railway which, obviously, the trucking industry in its present state would not be able to meet."

(Vol. 62 - 11184).

Later, Mr. Magee made these answers:

"Mr. Magee: I do not want to leave the idea that we are complying with the conditions of the railways ... I may have misunderstood you there but I did not say at any time that the trucking industry would be in a position to comply with the obligations that exist at the present time in respect to railway movement of this traffic.

"Mr. Sinclair: Quite frankly, it would be impossible for them to comply with those obligations. For instance, the obligation of leaving their equipment at the terminal elevator until such time as the terminal elevator can unload it. That is one example. Another example is that they will make available at the spout cars and they will run through because the grade does not fit the vehicle, they would have to keep equipment around all the time and sometimes their trailers would be kept around for 93 days. That would be impossible for a trucking company, would it not?

"Mr. Magee: Yes, that would be quite impractical.

"Mr. Sinclair: So in point of fact the trucking industry just could not live with the obligations that are now imposed on the railways for the movement of this western grain traffic. It is a practical impossibility because it does not fit in with their industry.

"Mr. Magee: That is certainly true under the obligations."

(Vol. 65 - 11491/2).

The obvious unfairness of permitting truckers to share in any proposed subsidy for the movement of statutory grain traffic, while not at the same time assuming comparable obligations and limitations as the railways, was recognized by Mr. George Paul, the witness for Canadian Manufacturers Association, and probably the most experienced independent traffic witness who appeared before the Commission. It was also recognized by Colonel J.J. Harold, one of the witnesses for Quebec, and an extremely competent and experienced administrator of the highway transport industry.

With respect to the conditions under which he would agree that trucks might participate in the subsidy, Mr. George Paul's view was as follows:

"Mr. Paul: . . . but I would say that, if the truckers want to participate in it, they will have to meet the same conditions.

"Mr. Sinclair: And that would include free time at terminals, having available equipment and all these matters?

"Mr. Paul: Whatever is involved in the movement of grain."

(Vol. 54 - 9946).

And he continued:

"Mr. Paul: That if the trucks want to participate in the business they have to meet the same conditions as the railroads.

"Mr. Sinclair: And charge the same rates?

"Mr. Paul: They would not get the business if they charged more.

"Mr. Sinclair: And they would have to carry both short haul and long haul traffic?

"Mr. Paul: Conditions all similar."

(Vol. 54 - 9949/50).

Colonel Harold said:

"Mr. Sinclair: You see, Mr. Harold, there are some rather peculiar situations existing about the handling of grain in western Canada: for instance, cars of grain can go to the Lakehead and stand there for as long as 93 days without any demurrage being assessable on them?

"Colonel Harold: Then, the same government regulations should apply to trucks if they wish to take advantage of that traffic.

"Mr. Sinclair: Another example of a special provision is that by direction of the regulatory authority the movement of grain can have first priority and all equipment of the company can be channeled into that service and given priority over other shipments?

"Colonel Harold: If a trucking enterprise wished to enter into that traffic I think that they should be forced to meet the same obligations. I have always been a thorough believer in the necessity of equal responsibilities and obligations."

(Vol. 126 - 20379).

Canadian Pacific subscribes to the views of these two experienced witnesses. The obvious unfairness of permitting trucks to share in the subsidy while not at the same time being subject to the same obligations nor capable of handling the entire volume of traffic was noted by Commissioner Gobeil:

"It means that maybe in 10 years, as you say, the trucks may take part of the burden or advantage of the subsidy, but if the truck cannot take it all, cannot take 100% of it, it would mean that the trucking industry would get the best of the subsidy and the railways will be left with the worst part of it. That might happen?"
(Vol. 65 - 11600)

There can be no disagreement that the statutory grain rates are a major issue before the Commission. The first step is to determine what would be a just and reasonable level of rates for the movement of the grain traffic to export positions in Western Canada. The next step is to determine the relationship of revenues and cost for this very large segment of traffic. This having been done, an equitable solution to the problem must be found.

The railways have problems other than statutory grain traffic, but apart from this traffic they have no problems about which they cannot do something and are doing something.

What is the evidence before the Commission regarding the statutory grain rate traffic? In effect it is this:

- that the western grain rates first instituted as a matter of agreement in 1897 were fixed by statute in 1925 and remain to this day at the 1899 level notwithstanding substantial increases in wages, in material prices and in income taxes particularly in the last 15 years.
- that to be at a just and reasonable level these rates should be increased 100%.
- that a careful and comprehensive study of the cost of moving grain done by the most modern methods applied by experienced railway officers discloses that for Canadian Pacific alone there is a loss on this traffic of some \$36 million annually.

- that although the cost study was vigorously attacked by cost consultants, economists and others representing certain Provinces and certain grain handling organizations, the basic principles used by the railways were not altered and the dollar amounts arrived at were shown to be correct.
- that railways are the only economic means of moving grain from country origins to export positions in Western Canada.
- that it is the national economic policy of Canada that:
 - grain will continue to be grown for export in Western Canada; and that
 - railways be maintained in a financially sound position.
- that at a just and reasonable rate level, grain would move but at the expense of hardship on western farmers and possible elimination of marginal farmers; that therefore the rate to the farmers should not be increased but that the present loss on this traffic be paid by the Government to the railways.

It has been urged that statutory grain traffic is not the only problem and that no solution should be recommended limited solely to the grain issue. It is agreed that statutory grain traffic is not the only problem but it is the only problem which because the rates are beyond the jurisdiction of the Board, there is no solution open either to the Board or the railways.

It is an issue touching specifically on rates and as such affects to a material degree the freight rate structure. Consequently, it is an issue which requires specific adjustment. In the national interest of maintaining a sound freight rate structure, the solution to the statutory grain issue should not be obscured in some overall

remedy for railway problems generally. Such a solution would work a disservice to shippers, to railways and to the nation.

In recent years the burden of the statutory grain rates has fallen with increasing severity on Canadian Pacific. It is the submission of Canadian Pacific that the burden of the obligation of moving grain at low rates be recognized for what it really is, namely a national burden.

The proposal of Canadian Pacific will in no way alter the rates paid by the western farmers. It is a realistic and sensible proposal designed to leave the present statutory rates untouched and at the same time to recompense the railways for the transportation service they are performing in the movement of this essential commodity. It is an equitable solution of a national problem.

III FREIGHT RATE STRUCTURE

The Order-in-Council appointing this Commission refers to "problems relating to railway transportation in Canada and the possibility of removing or alleviating inequities in the freight rate structure" and the Commissioners are directed specifically to consider and report upon:

"(a) inequities in the freight rate structure, their incidence upon the various regions of Canada and the legislative and other changes that can and should be made, in furtherance of national economic policy, to remove or alleviate such inequities."

Mr. J.M. Roberts has described the freight rate structure as extremely sensitive (Vol. 106 - 17678). He also pointed out:

"The Canadian freight rate structure is complex. This is not surprising in view of the fact that it meets numerous complex situations which arise from moving thousands of different articles covering a wide range of transportation characteristics and value between thousands of points (Vol. 106 - 17610/1).

The fact that the freight rate structure is sensitive seems to have been overlooked by many people who have appeared before this Commission. It is apparent from the views and theories which have been expounded that there is a feeling by some that the making of

freight rates is a mere matter of arithmetic. The people whose duty it is to deal with these matters from day to day know that such is not the case. The making of freight rates cannot be done in a vacuum. It requires not only a knowledge of railway operations but an understanding of the economy of the country, the inter-relationship of rates and an appreciation of many competitive features. As Mr. Roberts said:

"This requires the application of experienced judgment so as to maximize volume and net revenue."
(Vol. 23 - 3277).

The freight rate structure is a mechanism whereby literally hundreds of thousands of prices are made. These prices are inter-related in many ways, as for example, distance, loadability, competition, value and substitute commodities. As the freight rate structure is a mechanism whereby prices are made, it is changing continuously due to changing conditions of commerce. It is obvious, therefore, that it must be flexible in order to meet these changing conditions. It cannot meet the challenge if there are imposed on this structure rigid rules for the making of rates, regardless of the circumstances. As Dr. E.W. Williams aptly put it:

"But rate making theories are not wisely to be enforced by legislative fiat. The rate making, or pricing, problem is a very practical one embracing wide variation of circumstances and requiring flexibility and speed in administration."
(Vol. 101 - 16978).

The difficulty of major adjustments to the freight rate structure was noted by the Board of Transport Commissioners in its interim report to the Governor-in-Council on the equalization of freight rates, dated March 25, 1955. The Board said:

"...the equalization of freight rates is a long involved and difficult process, and a serious false step in any respect in adjusting the freight rate structure might cause a great deal of harm before it could be rectified. As was said by the Royal Commission on Transportation at page 125 of its report:

"The objective of equalization is something which can only be attained after considerable study by the Board and by the railways. Undoubtedly, many serious problems are involved, for example the effect that the proposals may have upon railway revenues, on established industries and on trade and market patterns. All these things are of the utmost importance."

(Page 6 of the Interim Report)

It should be noted that the Order-in-Council constituting the Commission sounds a note of warning in this respect: "the legislative and other changes that can and should be made, in furtherance of national economic policy."

The purpose of this portion of this summation will be to examine matters said to be inequities in the freight rate structure and to consider whether the proposals suggested can and should be recommended in furtherance of national economic policy.

In dealing with the subject of inequities in the freight rate structure, it may be recalled that it is the position of Canadian Pacific that the fixed level of statutory grain rates is the greatest inequity in the freight rate structure and possibly the only one of significance. Consequently, the remarks of Canadian Pacific as contained in this section of its summation should be considered in the light of its submission on the statutory grain rate issue.

Legislative and Economic Principles Underlying the Freight Rate Structure

When consideration is being given to something which is said to be an inequity in the freight rate structure and to the proposal suggested for its remedy, certain questions must be answered:

What is the freight rate structure?

What are the principles on which it has been built up?

What is said to cause the inequity?

What would be the effect on the national economy of the adoption of the proposal to remove the inequity?

Underlying the freight rate structure are certain basic principles which determine the making of just and reasonable rates. These principles have been developed over the course of a century and are the basis on which the freight rate structure now operates. Some of these principles are found in the Railway Act. Others are the

expression of practical economics that have enabled the economy of Canada to grow and its commerce to move freely.

The principles found in the Railway Act may be summarized as follows:

Rates must be just and reasonable (Section 328(1)). This means just and reasonable to shippers and to the railways. Under this subsection, the Board may disallow any tariff or any portion thereof that it considers to be unjust or unreasonable, or contrary to any provision of the Act, and may require the railway to substitute a satisfactory tariff or may prescribe other tolls in lieu of the tolls so disallowed.

The only limitation of the Board's powers in this respect is that contained in Section 328(6) and (7) dealing with rates on grain and products to export positions in Western Canada.

All freight tariffs and all amendments to them must be filed with the Board and made public, provision being made for due notice of any change (three days in the case of a reduction and thirty days in the case of an increase) before the rates may be lawfully charged (Section 333). These provisions as to notice do not apply to competitive rate tariffs for which special provisions are made. Competitive rates are subject to Section 334 under which the Board may make special provisions for filing and publication, but at the same time, may require the railways to furnish such information justifying the necessity for the rate and proving the compensatory nature.

When the railways increase a rate previously authorized to be charged under the Railway Act, other than a competitive rate, and an objection is filed with the Board to such increase, the burden of proof justifying the increase is upon the railway company filing the tariff (Section 335).

It is the national freight rates policy that every railway company shall, so far as is reasonably possible, in respect of all

freight traffic of the same description, charge tolls to all persons at the same rate (Section 336).

Subject to Section 328(6) and (7), all rates must be compensatory (as to rates generally, jurisprudence of the Board; as to competitive rates, Section 334; as to agreed charges, Sections 32(6) and 33(3) of the Transport Act).

Unjust discrimination as between persons or localities, undue preference, prejudice, or disadvantage, are all forbidden under Sections 317 and 319 of the Railway Act and the Board, under Section 320, has full powers to make findings, determinations, or regulations in respect of these matters.

No toll for the like description of goods carried under substantially similar circumstances and conditions shall be greater for a shorter distance than a longer distance on the same line or route, unless the Board is satisfied that, owing to competition, it is expedient to allow it (Section 317(5) and (6)).

Within the framework of these legislative principles the freight rate structure reflects a number of economic principles.

The first of these recognizes that rates are made on the basis of value of service. Mr. J. M. Roberts said:

"In all rates the value of the service to the shipper or consumer establishes an upper limit, as indicated by the ability of the traffic to pay the proposed rates and still move at optimum volume. By this is meant that the demand for the goods at the point of destination will be such that the cost of transportation when added to the other costs involved, will support a traffic level as near to the maximum as possible. This is subject to an overall limit in that rates on all the traffic must not result in total net revenue beyond a reasonable level."

(Vol. 23 - 3265)

With respect to the lower limit of rates, Mr. J. M. Roberts said:

"The lower limit of the range of rates is fixed by the need on the part of the carrier to have rates at a level no lower than the variable cost of providing the service in respect to any individual segment of traffic and which will, in addition, make some fair contribution to constant costs."

(Vol. 23 - 3274)

Under the value of service principle, the demand characteristics of the traffic are recognized. With the exception of Dr. Winch, no one appearing before the Commission disputed the basic validity of value of service pricing.

The second economic principle underlying the freight rate structure is that distance is a factor in freight rates. Dr. Hu Harries said:

"It is well known that land transportation costs, regardless of the particular freight rate structure, are essentially a function of distance ... Regardless of the transportation policies pursued, it will be generally agreed that this situation must maintain."
(Vol. 97 - 16488).

Mr. J.M. Roberts said:

"The distance over which goods are carried has a direct bearing on the rate which can and must be charged for the service. The length of the haul obviously has a direct effect on the variable cost of the service performed."
(Vol. 106 - 17612).

In the making of rates, the effect of distance is recognized through the application of taper in the basic freight rate scales. The principle of rate taper has been recognized for years in the making of freight rates in Canada.

The third economic principle in rate making is that it is in the interests of all shippers for the railways to make competitive rates. As Manitoba said:

"It seems clear, that once competition becomes a fact, the railways, from the point of view of contribution to net revenue, should meet the competition where it occurs and not reduce their rates to intermediate points."
(Vol. 92 - 15700).

It should be noted that the railways in making competitive rates and agreed charges must obtain a contribution to net and thus any contribution which flows from such rates obviously is reducing the contribution required of all other traffic.

It appears that some parties, including counsel for Alberta, have some doubts as to the compensatory nature of some existing rates. It is recognized that all rates including competitive rates and agreed charges must be compensatory. As was stated by counsel, Canadian Pacific would have no objection whatsoever to have spelled out, if that is felt to be necessary or desirable, that railways be required to establish periodically to the Board on a confidential basis that rates including normal, competitive and agreed charges are meeting variable costs and something more. (Vol. 108 - 17990).

Notwithstanding the obvious economic validity of making competitive rates, some people appear to hold the view that competitive rates and agreed charges work an inequity as against the shippers at points where the competition does not exist. This is wrong. In the case of carrier competition, the shipper is in a position to take advantage of whichever form of transportation he wishes. By meeting that competition, the railways have in no way improved the position of one shipper to the detriment of another. Any disadvantage of a shipper at a non-competitive point arises from factors extraneous to the railways. It would be unsound to apply the competitive rate where the competition does not exist.

It is essential to recognize that over the years decisions respecting many millions of dollars of capital investment have been made by industry on the basis of this freight rate structure. Reasonable railway revenues are also an essential part of a sound transportation system. This is what was meant by the Board of Transport Commissioners when it said that "a serious false step in any respect in adjusting the freight rate structure might cause a great deal of harm before it could be rectified" (p. 6, 1955 Interim Report to Governor-in-Council).

It has been said many times that Canada is a country which involves transportation over great distances. In the past the freight rate structure has permitted lower-valued goods to move freely because of the contribution recovered from the higher-

rated traffic. Many low-valued commodities have moved at relatively low rates for substantial distances because of this cross-subsidization. In the post World War II period the change which has occurred has been that the higher-rated traffic has been eroded by competitive media of transport, with the inevitable consequence that there is not now available the same contribution from higher-rated traffic in aid of the low-valued and long haul traffic. As a result, it is inevitable that the rates on the low-valued and long haul traffic must move upward to meet overall transportation requirements conditional upon volume and growth of rail motivated traffic. Mr. J.M Roberts pointed this out when he said:

"... the contribution which the higher rated traffic has been making in the past to the lower rated traffic is not now possible and low rated traffic must now carry more nearly its proportion of total cost."
(Vol. 106 - 17649-50).

In light of the legislative and economic principles underlying the freight rate structure, it is possible to consider what constitutes an "inequity in the freight rate structure". It is submitted that an inequity in the freight rate structure can only exist where there has been an unjustified shift of transportation costs from one group of shippers to others, or from one region to another, or from shippers to the railways themselves. It is now proposed to consider the major inequities alleged and the proposals made.

The Commission has heard many complaints of inequities in the freight rate structure. While it is difficult to give any general description of these, the principal complaints may be said to fall into two large groups:

- (a) that in consequence of the new competitive factors in Canada, the freight rate structure itself is outmoded and should be revised, with more emphasis on cost of service and with provision for maximum rates in various circumstances.
- (b) that horizontal percentage increases in freight rates place an undue burden on long haul non-competitive traffic which works an inequity on the shippers of this traffic, particularly those in the Maritime Provinces and Western Canada.

To meet the alleged inequities within these two large groups various parties presented suggestions or proposals to the Commission. Some of these proposals were hypotheses. Others were developed to provide a specific framework and a conclusion based on the assumptions in that framework. Thus, the latter may be described as economic models. For example, Dr. Harries and Dr. Williams contented themselves with advancing hypotheses, while Dr. M.J. Roberts and Dr. Hughes advanced what can be described as economic models. Each of the suggestions advanced, in the view of Canadian Pacific, contains fundamental defects either in the facts used in the development of the framework, the logic used, or in the assumptions upon which the hypothesis was based.

The purpose of an economic model is to provide a framework for analysis. It suggests some of the important questions to ask, some of the important places to look, and some tentative conclusions to be investigated. An economic model is basically a means of organizing data and drawing some implications from the data, to arrive at a conclusion. The conclusion must be tested; in many cases the only test is experience.

Economic models, however, are often misused. First, there is the use of a model which does not conform with fact in a particular situation and ignores knowledge and experience. Use of such a model produces distorted results. Secondly, models used to describe applied economic problems in a summary fashion are dangerous because at best, they are an abstraction or a highly oversimplified picture of the actual facts.

A sound economic model must stand up to two basic tests. First, do the assumptions on which it is based correspond to the reality to which it is being applied. Secondly, how well does the economic theory and internal logic of the model stand up to reality, for in applied economics there are multiple causes and intricate relationships in most cases. Multiple causes and intricate relationships certainly are present in the railway freight rate structure which spans not only domestic freight traffic movements from coast to coast but also large volumes of continental and export and import traffic.

In the application of economic theory to practical problems, therefore, it is essential to recognize clearly these limitations.

The following analysis of the various economic theories which have been placed before the Commission has been made against a background of these limitations and inherent dangers which can arise from an over reliance on theory.

At the hearings before the Commission, attempts were made to develop, by cross-examination of the various witnesses, whether the theories did, in fact, correspond to realities, and in addition, how well the theory would stand up to practical application. Evidence was given by Mr. Edsforth as to his analysis of these proposals in the light of the practical considerations, which he, as an experienced Traffic man, must deal with daily.

Canadian Pacific has a sincere desire to test theories objectively to ascertain if they have validity when measured against practical considerations. Canadian Pacific is in the transportation business and it must stand or fall on the results of its efforts to develop and carry traffic profitably. Despite some seventy-five years of varied activity in this field, Canadian Pacific does not pretend that it knows all the answers and recognizes, as it has always done, that conditions do change and methods of doing business must be changed accordingly. The changes Canadian Pacific has initiated demonstrate this, for example merchandise services. It welcomes suggestions which may produce some better way of doing business, and if convinced that these suggestions would lead to such results, Canadian Pacific would adopt them without hesitation.

Complaints on the freight rate structure itself

With regard to complaints on the freight rate structure itself, the principal proposals were those put forward by Dr. Hu Harries, a witness for Alberta; the proposal of Dr. E.W. Williams, Jr., a witness for Manitoba and Alberta; the proposal of Dr. M.J. Roberts, another witness for Alberta; the proposal of the Maritimes Transportation Commission; the specific proposals of Dominion Steel

and Coal Corporation and Acadia-Atlantic Sugar Refineries Limited; and the proposal of British Columbia for a cost oriented freight rate structure, which will be dealt with separately.

All these proposals had one significant factor in common: they would either completely, or to some considerable degree, disregard demand characteristics and substitute rigid statutory rules for the making of rates. To the extent that the proposals disregard demand characteristics, they represent an attempt, in some cases by legislation, to depart from the basic rate making principles now followed and to require the freight rate structure to do what it cannot equitably do.

The Dr. Harries' proposal

Dr. Harries' proposal was that:

"... the upper limit to permissive charges for the movement of goods in Canada be established by statute at not more than the lowest competitive rate published for the same or similar traffic, plus 40%." (Vol. 97 - 16527).

Dr. Harries clarified his proposal:

"Mr. Sinclair: You are saying whether it is a commodity or competitive rate or whatever kind of rate it is you pick the lowest and work 40 per cent over that?

Dr. Harries: I think that would be better." (Vol. 98 - 16714/5)

The only rates which Dr. Harries excluded as being a basis for maximum rates would be spot competitive rates (Vol. 98 - 16704) and possibly short-term development rates (Vol. 97 - 16622).

Dr. Harries made it clear that his proposal for maximum rates would apply to all traffic:

"Mr. Sinclair: ... and yet you cannot give this Commission a definition that will be applied to determine which rates are going to be subject to your maximum?

Dr. Harries: Well, all rates are subject to the maximum.

Mr. Sinclair: All rates are subject to the maximum?

Dr. Harries: Yes sir.

"Mr. Sinclair: Even the competitive rates?

"Dr. Harries: Well, certainly the competitive rates are subject to the maximum rates."

(Vol. 98 - 16699).

It was Dr. Harries' proposal that the percentage of 40%, which he explained was arbitrarily selected, should be reviewed from time to time (Vol. 97 - 16527) but that having been determined, would not be changed for, say, 5 years. (Vol. 97 - 16577). Under the proposal, rates published by any railway in Canada would affect the rates on the same or similar traffic of all other railways (Vol. 98 - 16630).

It is clear that Dr. Harries' proposal is that maximum rates can be fixed with reference to the level of competitive rates. Dr. Williams, another witness appearing for Alberta, expressed his view of this approach as follows:

"Mr. Sinclair: Let me give you what I have in mind; if we are going to take a situation in which they are going to consider the fixing of maximum rates by principle or in any other way, that a base rate upon which a mark-up was to be used should not be a competitive rate?

"Dr. Williams: If I understand you, you are referring to the process by which one should determine the level of the maximum rates?

"Mr. Sinclair: Yes.

"Dr. Williams: I find it a rather unsatisfactory thing to try to make a mark-up on a competitive rate."

(Vol. 102 - 17121).

Manitoba was also of the view that competitive factors should not govern the level of rates where the competition did not exist. Manitoba said:

"In other words, if the railways, due to competition, occasioned by the existence of a pipe line, reduce the rate on the shipment of oil, between Regina and Winnipeg, they would not be acting in the best interests of their investors if they reduce the rate on another commodity such as bricks, or on another movement of oil, where the same competitive factors did not exist."
(Vol. 92 - 15667).

Mr. Edsforth said:

". . . I think the principle is a bad one. And I say this because, in the first place, this would create an unstable foundation for any type of maximum rate. Certainly setting maximum rates on rates established to meet competition would be most unsatisfactory."
(Vol. 109 - 18129).

He explained this by saying:

". . . a rate put in to meet competitive conditions in one part of the country should certainly not be used as the gauge for setting maximum level of rates on that same commodity in all parts of the country, particularly where competitive conditions are not the same.

"That is why I say that it is an unstable foundation, an unsatisfactory base.

"Furthermore, it has this other disadvantage, that competition changes from time to time, so that the level of the competitive rate could move up and down quite rapidly, thus necessitating a change in the maximum: a great instability."

(Vol. 109 - 18131).

The practical difficulties of Dr. Harries' proposal were discussed by Mr. Edsforth (Vol. 109 - 18129 et seq.), and may be summarized in this way:

- The instability of the maximum rates which would be fixed with relation to an ever changing base.
- The artificial and rigid application to all parts of the country of the particular circumstances that instituted the publication of the lowest rate on which the overall maximum would be computed. Thus the lowest rate on a given commodity might well be a water competitive rate fixed with relation to the low cost of water transportation. The maximum rates would thereupon reflect the element of water competition in all parts of the country, although in many instances the movement would be hundreds or even thousands of miles removed from any effective water transportation.

- The deterring effect that this would have on the railways in meeting competition if they knew that by doing so they would thereby lower the maximum rates and that by making a new or reduced competitive rate, it would automatically become the basis for setting a new and lower maximum.
- The practical difficulty of setting maximum rates on each commodity for all distances when based on a rate that applied only for a particular distance.

From the standpoint of shippers, the fluctuations that would be bound to occur in the maximum rates because of changes being made in the base rate from time to time, would have a most disturbing effect. No shipper could calculate with any certainty what his rate was going to be at any given point of time. In figuring on an order, a shipper might well base his calculation on the rate then in effect only to find that before the order was filled, his rate or his competitors' rate had changed.

The fact that a new or reduced competitive rate would be likely to affect the maximum rates all across the country would make it necessary for the railways in their own revenue interests to carefully consider whether they could afford to put in a competitive rate. Dr. Harries agreed that this would be so:

"Commissioner Gobeil: Don't you think that normally the chance would be, as I know for instance of a specific case where it was done last year, that if my rates governed the whole rate, the whole commodity, don't you think the chance would be that I would not get that agreed charge?

"Dr. Harries: I do not think there is any doubt about it, sir, that there would be, in the case that you mentioned where your one rate is going to govern all the rates, that there would be a pretty searching examination by the railways before they put that rate in. I do not think there is any doubt about it."

(Vol. 97 - 16568).

While it might be argued that this would not place shippers at any disability because they would already be in a position to take advantage of the alternative form of transportation which the railways desired to meet, it would have a serious effect on a shipper if external market competition was being met. In such instances, the railways would have to weigh the desirability of assisting a Canadian shipper to meet external competition against the effect this action might have in reducing rates elsewhere. At best, it would mean that the shipper would have to wait for some time while the railways made a survey of the situation and in all likelihood there would be many cases where the railways would be reluctantly compelled to inform the shipper that they could not assist him, much as they might want to do so.

This is not speculation. The exact parallel of this situation arose after the enactment in 1951 of the One and One Third Rule. Mr. Edsforth explained what occurred at that time:

"... we found that the application of the One and One Third Rule would so drastically reduce our revenue to intermediate territory -- that is territory intermediate to the British Columbia coast -- that we had to substantially increase many competitive rates, and in other cases cancel them entirely, and we lost traffic that way, quite a bit of it."
(Vol. 109 - 18134/5).

Dr. Harries himself admitted that the initial consequence of his proposal would be a reduction in rail revenue (Vol. 97 - 16579).

The proposal of Dr. Harries is an excellent example of the consequences of relying on an untested economic hypothesis. The foundation of Dr. Harries' hypothesis was that rates are too high. Dr. Harries said:

"You can always define 'too high' fairly easily: it means what you are paying today, and anything higher, of course, is right out of line. I think that is a fair definition of the way most of us use that term. It is the way I use it in many instances.

"Mr. Sinclair: That is a subjective test?

"Dr. Harries: That is correct, sir."

(Vol. 97 - 16522).

It is apparent from this that in Dr. Harries' view, a just and reasonable rate does not mean just and reasonable to railways as well as to shippers. In fact, it is almost an argument for free transportation above variable cost. Basing himself on this hypothesis, he has then sought, by an arbitrary statutory rule, to limit the maximum rates on all traffic. The consequences of applying this economic hypothesis to the freight rate structure show its unrealism.

If any method was being sought to deter the railways from meeting competition and assisting shippers in meeting external market competition, Dr. Harries' proposal would seem to be the most effective means of doing so. No proposal could be better designed to assist the competitors of both Canadian shippers and railways.

The Dr. Williams' proposal

The evidence of Dr. E.W. Williams can be summed up by saying that because of the development of competition by other forms of transport, traditional principles of railroad rate making have begun to be destroyed (Vol. 101 - 16942) and that, because the present method of establishing the reasonableness of rates involves circular reasoning (Vol. 101 - 16970), a new test of reasonableness is required (Vol. 101 - 16974). Dr. Williams said:

"A test, therefore, of whether rates have got so high as to be unreasonable in the sense that they tax the shippers of the traffic charged such rates above what those same shippers would have to pay if an equal rate policy were used, represents the discrimination that passes beyond the range of the ordinary economic justification for discrimination."
(Vol. 101 - 17029).

Dr. Williams agreed that there was no burden cast on the non-competitive traffic by the traffic carried at competitive rates and agreed charges (Vol. 102 - 17134/37). Dr. Williams said, however, that while the non-competitive shipper had no cause for complaint about the effect of competitive rates, he did have a cause of complaint arising from "the effect of solidifying the development which would otherwise be desirable for the country" representing "a disservice to the national economy as a whole." Dr. Williams then said:

"The question then arises that if it is a disservice is it so great a disservice as to justify some other means of carrying that burden other than to require it to be borne by freight shippers in the present fashion."
(Vol. 102 - 17139).

Dr. Williams' proposal for maximum rates would appear to require substituting some arbitrary test for the proven test of demand characteristics, which is the basis upon which non-competitive rates are now made. It is to be noted that Dr. Williams did not suggest any specific basis of testing the reasonableness of an individual rate. In the final analysis, Dr. Williams was content to suggest that possibly a situation could develop where the cost of providing rail transportation for traffic the railways could secure would become so high as to effectively prevent economic development. In such instances, he intimated that subsidy would be the answer. Of course, it might be that the economic value of transportation to the shipper would be greater than the economic value of labour to that shipper in the price of a given commodity. Therefore, on this theory, labour costs should be subsidized or some other cost of production because it is obvious that transportation is but one of the many costs which determine the economic activity of any particular region or shipper.

The Dr. Roberts' proposal

Dr. M. J. Roberts, appearing for Alberta, proposed a manner in which maximum rates could be calculated. Dr. Roberts said:

"With regard to the system of regulation you have, it is an implicit part of the law, if not explicit, that utility companies subject to regulation are entitled to be made whole to cover all the costs they incur including a normal return on all past investment providing this is done by not charging individual prices that are excessive.

"What we are talking about here is some weighted measure when prices are excessive. So, this part of the answer would add up to the fact that any net revenues achieved by the railways, however determined, by rational tests of appropriate rate ceilings, revenue achieved by this amount in captive or monopoly traffic is something they are not by social right entitled to."
(Vol. 103 - 17283).

It is clear that in Dr. Roberts' view an excessive price is something to which the railway is not "by social right" entitled. Dr. Roberts amplified somewhat his reference to "social right" as follows:

"Well, I can only say this: we are dealing here, I think, basically with a truly valid economic concept . . . keeping in mind, the validity of this proposition that the goal of the regulator seems to me, and this is what I am essentially arguing for, despite all the absence of illustrations, I think that this ultimately should be the social test, that when people pay more than they pay according to this standard I am prescribing here, they in some way are paying too much."
(Vol. 104 - 17351).

Stated simply, the proposal put forward by Dr. Roberts was that while discrimination is fully justified, a shipper should pay more under a system of discrimination than he would pay under a system without discrimination (Vol. 103 - 17241).

The Roberts' formula may be said to involve the following steps or assumptions:

- That discrimination is eliminated if in each case the rate exceeds the service cost by the same percentage (Vol. 103 - 17238).
- That the constant cost remains fixed regardless of the amount of output, while variable cost changes in proportion with output; however, the simplifying assumption was made that variable costs are unchanged per unit with decline in traffic (Vol. 103 - 17240 and 17243).
- That if total traffic were to move at average total cost per unit, there will be a decline in the present volume of traffic and such a decline in volume will result in an increase in total cost per unit.

- That an estimate must be made of the actual percentage reduction in volume assuming that traffic was going to move at the average total cost per unit.
- That when the reduction in volume has been estimated, average total cost per unit is computed.
- That an estimate is then made of the percentage increase in the average rate level necessary to meet the total costs of the reduced volume.
- That such new rate level be translated into a uniform ratio of rates to average out-of-pocket costs in order to give full cost coverage.
- Finally, that this ratio be applied to the out-of-pocket cost of each commodity to determine its maximum rate.

Dr. Roberts assumes that there is an average cost which will move all traffic. Whether the assumption is valid or not, he does not attempt to prove. It is apparent that volume and average cost per unit are interrelated. He does agree that as average unit cost increases, the volume will decrease, but this is not the same thing as saying that it can be assumed that there is an average unit cost which will move traffic in sufficient volume to ensure that all costs are paid. On the face of it, it would appear that as average unit cost increases and thus volume decreases, it is possible that there is no average unit cost which will move a sufficient volume to pay all costs. If this is, in fact, so, then obviously the formula is deficient in that it will never produce a figure from which you can eventually arrive at the ratio of revenue over average out-of-pocket cost, which is the key to the entire formula. This is akin to

the predicament of Tantalus in the Greek myth. Mr. Edsforth in his rebuttal testimony, discussed later, dealt with it in practical terms.

It should be noted that the key figure of the ratio of revenue over out-of-pocket costs is arrived at by use of average total cost per unit at a certain volume and average out-of-pocket cost for all traffic. This key figure is then applied to the out-of-pocket cost of each commodity.

The application of the formula involves the knowledge of the out-of-pocket cost of each traffic movement in order that the maximum be applied. Notwithstanding this, Dr. Roberts said that he did not think it would be necessary to cost out separately all the various commodities, as he said that lots of traffic has comparable characteristics for costing purposes (Vol. 103 - 17324). Apparently for this reason, he doubted if his scheme would require studies for every conceivable movement of every conceivable commodity (Vol. 103 - 17313). Obviously, the scheme would be meaningless if the maximum rate arrived at in the way he proposes was not applied rigidly to the movement of each commodity. This is his whole purpose and therefore, notwithstanding Dr. Roberts' doubt, it is quite apparent that the regulatory body administering the proposal would have to know the out-of-pocket cost for each movement of each commodity. This in itself would be an extremely vast and complex study involving great expense.

It is certainly apparent that the determination of this volume involves calculations and assumptions well beyond the practical limit of any regulatory body, or any railway handling a large number of different commodities over different routes. It would involve an accurate assessment of the

reaction of traffic of varying values and traffic characteristics and an exact determination of the way in which these diverse commodities would react to changes in rates as represented by average cost per unit. Dr. Roberts explained the data and analyses required for applying his proposal, mentioning cost studies, revenue data, market studies and analyses for specific application of the proposal (Vol. 103 - 17328; Vol. 103 - 17289 ff.).

Dr. Williams recognized that the application of the test put forward by Dr. Roberts was difficult

"... because it necessitates forecasting what the volume of traffic would be at equal rates and, such a forecast having been made, a determination of the level of equal rates that would sustain the rail plant."
(Vol. 101 - 17029).

Dr. Williams admitted that it involved "some degree of speculation as to what would occur, especially on the demand side . . ." (Vol. 101 - 17033). Dr. Williams agreed that, if the estimates or guesses proved wrong by subsequent event, they could have a tremendous leverage on the financial stability of the transportation company:

"Mr. Sinclair: And in fact the last judgment of any rate is the effect of it in the market? You would agree with Ripley on that?

"Dr. Williams: Oh, yes, except that when you get into that situation, again, you have something that is very difficult to test.

"Mr. Sinclair: And even after you get in there, you do not know, and I suggest to you you cannot say in advance -- not only you do not know subsequently, but you cannot know prospectively the demand characteristics for all the myriad movements that are covered by any given group of rates? Would you agree with that?

"Dr. Williams: I think that is generally true, although I think it is also true that with respect to a good range of substantial traffic movements it is possible to make some fairly decent estimates or guesses. They are not certainly definitive and they may be proved wrong by the subsequent event.

Mr. Sinclair: But the proof of them being wrong can have a tremendous leverage on the financial stability of a transportation company, such as a railroad; correct?

Dr. Williams: Very easily, if what we are talking about is in a magnitude of consequences, traffic-wise."
(Vol. 102 - 17127/8)

It is the submission of Canadian Pacific that it is impractical to compile such information, but that even if full cost studies of every commodity were available, no regulatory body could possibly conclude with accuracy the reaction of the various commodities to the changes in price that must be assumed in order to arrive at the exact volume of traffic which would move at any level of average costs per unit. Mr. Edsforth explained the difficulties and uncertainties involved in market analyses (Vol. 109 - 18162).

Mr. Edsforth was satisfied that Dr. Roberts' proposal would not be a good thing to be introduced in the freight rate structure (Vol. 109 - 18152). He explained the difficulties in determining the average cost of moving traffic in Canada as this was complicated by the fact that one-quarter of Canadian Pacific freight revenue is derived from international traffic, overhead traffic and rates in Canada related to the U.S. rates, which would have to be excluded (Vol. 109 - 18153). Mr. Edsforth said that as the theoretical maximum revenue could not be secured on some traffic, and could not be exceeded on other traffic, in order to maintain the revenue, the maximum would have to be raised. He also said that lower rates would have to be increased (Vol. 119 - 19673). He said that the application of Dr. Roberts' proposal could even involve lower rates for competitive traffic or agreed charge traffic than the competition would require, thus reducing revenue without improving traffic volume (Vol. 109 - 18157). Mr. Edsforth's opinion was the reduction of certain rates through the application of Dr. Roberts' maximum would not result in any significant increase in volume, certainly

not significant enough to compensate for the revenue contribution that would be lost (Vol. 109 - 18157). It must be remembered in this connection that Dr. Roberts was not contemplating that the lower rated traffic should be brought up to the maximum level:

"Mr. Cumming: In any event, it is not, if I understand what you say, an essential of your scheme that lower-rated traffic be brought up?

Dr. Roberts: Well, it is not contemplated that this should be done. It is an essential of the scheme that the inquiry would be made. What would happen to the traffic in total -- all traffic including that presently moving at high rates and that presently moving at low rates -- if there were no discrimination.

Mr. Cumming: Oh, I see. Merely as the study in order to arrive at the proper maximum to be set?

Dr. Roberts: That is right. That is right.

Mr. Cumming: That having been done, there is no necessity under your scheme for any rate action other than the imposition of the maximum and the bringing down of any rates in excess of that to that maximum level?

Dr. Roberts: That is right."
(Vol. 104 - 17340/1)

Mr. Edsforth's overall assessment was that the consequent necessity of increasing the maximum rates to make up for the loss in revenue would eventually result in maximum rates being pretty much back to what they are today, but that in the meantime railway revenues would have suffered, and the general stability of the rate structure would have been disturbed (Vol. 109 - 18160). Mr. Edsforth was of the view that these matters must be examined in a practical sort of way, and that any proposal must be something that will work, and work properly (Vol. 109 - 18163).

There are other practical difficulties. If Dr. Roberts' theory is accepted, this must mean that demand in all cases is almost completely elastic and would expand in direct response to rate reductions, or that the railways' share of the existing demand would be improved because of the lower rates. This theory could only be accepted if transportation cost was the only element that influenced the expansion or contraction of market demand. Such, of course, is not and cannot be the case. There are a

multiplicity of factors that affect market demand, such as changes in wage rates, taxes, in cost of raw materials and production, all of which affect the price of the finished goods. Under certain conditions, the demand is likely to expand, regardless of prices, while at other times, economic conditions may be such that the price level has little effect on reduction in demand. The interplay of many forces determines the elasticity of demand and the assumption that a reduction in freight rates alone, which in many cases would probably be only a small fraction of the landed price of the goods would stimulate demand, is wholly unwarranted.

The assumption that a reduction in rates down to the ceiling level would generate more traffic for the railways in competition with other transportation agencies requires some examination. There undoubtedly would be cases of traffic moving at agreed charges, some covering 100% of the volume, at rates higher than a maximum rate based on Dr. Roberts' formula. It is difficult to understand how the railways could hope to get more volume by lower rates on much of the agreed charge traffic. Mr. Edsforth pointed this out to the Commission (Vol. 109 - 18157/8).

As to traffic moving at other than agreed charges, possibly some would be attracted to the railways but from experience, it is known that corresponding rate reductions would be made by competing carriers in many instances, refuting the assumption that the railways would improve their share of this traffic.

It should be noted that when considering the volume of additional traffic necessary to offset the net revenue loss occasioned by rate reductions, the gross revenue from the additional traffic must be many times greater than the net revenue reduction from lower freight rates. This is so because there are costs associated with the additional traffic.

Drs. Williams and Roberts were prompted to put forward their proposals because they were of the view the test of the reasonableness of an individual rate involves circular reasoning

and therefore some external test of reasonableness was required. Dr. Williams was apparently of the view that the reasonableness of individual rates is tested only by comparing one rate with another, which in turn is compared with some other rate and that eventually one is brought back to the starting point.

Mr. Edsforth (Vol. 109 - 18148) developed in some detail the various tests of reasonableness employed by Canadian Pacific which went far beyond mere rate comparisons, although he emphasized that it was important to make sure that rates maintained a reasonable relationship so that the entire structure would not get out of balance. He referred, however, to other tests, such as the minimum level which must at all times meet the variable cost of handling the traffic, plus something more. Observing this minimum, all rates should be at a level which would enable the traffic to move freely and make the maximum net revenue contribution. This, he stated, was determined in the first instance by conferring with the shippers, looking at the product involved, estimating the market, and any other relevant factors. As a maximum level of rates, Mr. Edsforth suggested that this should not only be high enough, but of a sufficient range in levels to prevent any rigid restriction that would tend to unnecessarily reduce the net revenue contribution. His definition of the range in maximum levels was that the maximum rates should vary with relation to the type of traffic involved, having regard to the value of the service performed so that the maximum rate on one type of commodity could be quite different from that of another.

It is clear that present rate making and tests of reasonableness do not involve the circular reasoning suggested by Drs. Williams and Roberts. Moreover, while supporting a value of service freight rate structure, Drs. Williams and Roberts proposed an external test of reasonableness of individual rates in that structure derived from a cost of service base, indeed an average total cost base. It is the position of Canadian Pacific that value

of service with demand characteristics setting the ceiling, cannot be used with arbitrary percentages over cost setting the maximum rate.

Although Dr. Roberts said that he had not made a one-sided analysis (Vol.104-17444), it is quite apparent that he has recommended a one-sided solution. Proceeding on the basis that discrimination is valid, his proposal would reduce higher rates to a theoretical non-discriminatory level but would not increase lower rates to the same non-discriminatory level.

It is highly significant that Dr. Williams admitted that the external test based on an assessment of the effect of discrimination would not only be extremely difficult to apply, but that it had not been adopted anywhere in the relevant law or administrative procedure:

"Mr. Sinclair: So the test of reasonableness of a maximum rate would be an extremely difficult test to apply?

Dr. Williams: It is certainly true, and I think I said as much when I brought it in.

Mr. Sinclair: And you would also agree that your test of reasonableness of a maximum rate has not been adopted in any free enterprise economy that you know of?

Dr. Williams: So far as I am aware it has not been adopted anywhere if by that you mean embracing it either into law or into administrative procedure. That is right.

Mr. Mauro: Free enterprise or otherwise?

Dr. Williams: Yes, I know of no exceptions to that."
(Vol. 102 - 17143)

Surely in Canada where rail transportation is so essential to the economic well-being of the country, untested theoretical economic concepts are to be approached with extreme caution.

The degree of caution must increase where the proponent has neither the responsibility of seeing that the proposal works nor the responsibility for losses and dislocations which may occur. The freight rate structure is a practical thing upon which

rests hundreds of millions of dollars of investment by industry and the railways.

The Maritimes Proposals

The proposal of the Maritimes Transportation Commission was linked to a proposed revision of the Maritime Freight Rates Act. The M.T.C. said that the ideal revision of the Act would be one which would ensure the Atlantic Provinces producers the same rate on the shipment of products to Central Canada as the rate available to the Central Canadian competitor in that market (Vol. 83A - 71). The difficulty of achieving their ideal was recognized. The specific proposal of the M.T.C. was that the M.F.R.A. be revised to provide a subsidy to Maritime shippers covering the entire percentage difference between the average Maritime to Eastern rail rate and the average Eastern to Eastern rail rate (Vol. 83A - 90/1). This would leave the Maritime ideal to be reached some other time, but in the meantime would materially increase the Maritime subsidy. The M.T.C. did not ask for a revision of the M.F.R.A. insofar as traffic to Western Canada is concerned (Vol. 83A - 88).

The Maritimes Transportation Commission justified its proposal on two inter-related grounds; namely, historical precedent and present economic need;

Mr. Dickson: Yes, Mr. Cooper, that is the case of the Maritimes Transportation Commission -- historical precedent and the present economic need requires today and for the future, as long as the economic need exists, the de-emphasis of distance in rates on traffic moving from the Atlantic provinces.

Mr. Cooper: And those two reasons, do you say, are of equal importance in your submission to the Commission?

Mr. Dickson: It is hard to put a quality on either one of them. They are both very important.

Mr. Cooper: Would you say that one is independent of the other? Each one stands on its own feet?

Mr. Dickson: No, I think they must be connected.

Mr. Cooper: But one -- am I correct in thinking that one, nevertheless, is perhaps an alternative to the other? In other words, have you got two prongs to this application, each one standing separately, or is it all one reason -- different facets of the same thing?

"Mr. Dickson: We have based our case on the two prongs, and I would think that both of these factors must be considered in connection with our case."
(Vol. 84 - 14489)

Mr. Dickson said that the two bases were inter-related (Vol. 85 - 14664).

The complexity of the argument based on historical precedent, not to mention the necessarily conjunctive argument, presents great difficulty in accepting the Maritimes' proposal tied as it is solely to the freight rate structure. Moreover, it should not be overlooked that the recommendation of the Royal Commission on Maritime Claims (the Duncan Commission) was a recommendation "once and for all" of all the historical considerations and this recommendation was then embodied in the Maritime Freight Rates Act. It is not without significance that the Turgeon Commission, in reviewing complaints comparable to those now put forward, said:

"Nothing put before the Commission warrants a recommendation of such extensions of the Act. The proposals overlook the basic intent and purpose of the Act."
(Turgeon Commission, p. 234)

The Turgeon Commission also noted that the Duncan Commission had used the words "once and for all" in summing up its conclusions.

Basically the proposal of the Maritimes Transportation Commission is that distance be even further disregarded in the making of freight rates on traffic moving from the Maritimes to Central Canada. The question of whether this proposal arises as a consequence of an existing inequity in the freight rate structure or is extraneous, involving among other things resource base, will be discussed later. However, the merits of the proposal from the point of view of rate making warrant comment.

Mr. Edsforth pointed out that because the proposal was based on the average level of rail rates within Eastern territory and the average level of rail rates on traffic moving by rail from

the Maritimes to Eastern Canada, one shipper might get more assistance than he really needed, and another might not get enough (Vol. 109 - 18180).

Mr. Dickson, one of the witnesses for Maritimes Transportation Commission, agreed that if the proposal was accepted, there would be demands from Eastern manufacturers for some relief on the grounds that they were the short-haul shippers and that the Central Canadian market was their traditional market, which would be prejudiced to some extent by the Maritime proposal (Vol. 85 - 14664).

Mr. Dickson agreed that the Duncan Commission was looking at rate changes rather than rate levels:

"Mr. Sinclair: Well, Mr. Dickson, the Duncan Commission looked at rate changes rather than rate levels, did they not? They looked at the change in rates, not in the level of rates?

Mr. Dickson: The Duncan Commission said that the maritimes 100 had become 192.

Mr. Sinclair: That is measuring change rather than level, is it not?

Mr. Dickson: That is right. I was just going to add that the 100 rest of Canada had become 155.

Mr. Sinclair: That is measuring change, not level?

Mr. Dickson: Yes, that is right; they measured the rate of increase."
(Vol. 85 - 14665)

When that Commission made its recommendation, which it said it was doing once and for all, it was making an adjustment to correct the rate changes that had occurred. Provision was then made in the Maritime Freight Rates Act by Section 3(2)(b) for changes in the tolls or tariffs to meet increases or reductions as the case may be in cost of operation. The Maritimes Transportation Commission proposal would, in effect, repeal this Section as the Maritimes to Eastern rate would then not reflect changes in cost of operations from the Maritimes to Eastern Canada, but the average change of rate levels for whatever reason in Eastern Canada.

It is worth noting here that the Province of Quebec was opposed to the changes proposed by the Maritimes Transportation Commission on the ground that they run contrary to the true objective of the Maritime Freight Rates Act (Vol. 125 - 20739).

Dominion Steel and Coal Corporation proposed that it should not pay a net rate in excess of rate parity with Hamilton at Montreal (Vol. 85A - 32A) on shipments of billets, blooms and wire rods from Sydney, Nova Scotia. Dosco suggested that for rates on these products to points beyond Montreal, there should be added to the Montreal base rate the differences that applied on these products as on July 31, 1959, over Montreal to the points beyond (Vol. 85A - 35).

The Dosco proposal was a clear attempt to have the rate structure offset geographic disadvantages of Dosco with regard to finished products. Dosco could well have a geographic advantage with regard to coal or iron ore compared to the Hamilton plant and if the proposal of offsetting geographic disadvantage for the finished products of Dosco was to be applied, why not equally apply the proposal to offset the geographic disadvantage of the competitor with regard to raw material. It is for reasons such as this, among other obvious ones, that the rate structure cannot be used to offset geographic disadvantages.

The Acadia-Atlantic Sugar Refineries Limited proposed that the western limit or boundary of the "select territory" now defined for purposes of the Maritime Freight Rates Act as at Diamond Junction or Levis, should continue as the westerly boundary of the so-called Maritimes area and that sugar traffic moving outward westbound all rail from any point in the select territory beyond the limit of the eastern lines at Diamond Junction or Levis should receive a subvention equal to the full proportion of the

through-rate on the eastern line and that the Federal Government assume the cost and reimburse the railways accordingly (Vol. 4 - 409/10). T. McAvity and Sons Limited subscribed "wholeheartedly to the thoughts expressed by the Atlantic brief". (Vol. 4 - 446).

The proposals of Acadia-Atlantic Sugar, which McAvity and Sons supported, again is using the freight rate structure to offset distance from markets, something that the freight rate structure cannot equitably do. The reaction of other shippers competing in the same market is immediate, as was indicated by the reaction of the Canada and Dominion Sugar Company presentation.

Is there an inequity arising from the rate level of non-competitive rated traffic?

Certain rates in the freight rate structure are marked competitive; the balance of the rates are described in a number of ways. The point is - that competition affects many rates not marked or designated competitive. For example, the traffic officers of Canadian Pacific in their evidence, have stated that competition affects the level of normal commodity rates and as is known agreed charges arise from competitive factors. The evidence before the Commission, and it has not been challenged, is that competition is now all-pervasive. The so-called captive traffic is captive by choice of the shipper rather than by necessity. The shipper recognizes a better price in transportation and takes it and because the railways handle all of a given movement, does not make that traffic captive except by choice of the shipper.

It is important to emphasize that various types of competition exist which affect rate levels. Mr. J.M. Roberts in his evidence pointed this out (Vol. 23 - 3372; Vol. 109 - 18069 et seq.). Competition is both active and potential. Each type is equally important. Carrier competition is obvious. External market competition is fairly well known. Substitute product, alternative source of supply and industry relocation are all competitive factors which affect rate levels which are not so well known.

It is easy to prepare exhibits showing certain rates affected by competition at a lower level than normal rates. It is easy to move from this fact to the mistaken conclusion that rates affected by competition being lower than normal rates create an inequity on traffic moving at normal rates. That this approach was clearly wrong was acknowledged by a number of witnesses and numerous references could be made to the transcript. One example:

"Mr. Sinclair: Well, then, if each of the agreed charges and each of the competitive rates by law must be able to meet the test of increasing net revenue, improving net revenue, how can there be a burden by virtue of that thrown upon traffic that has not got an economic substitution?

"Dr. Williams: I do not think there is any burden cast by the incident you are talking about. I do not think I have ever argued there was a burden cast by any such individual incident or even a collection of such incidents. What we are finding, however, is that the variety of pressures, including the inflationary pressure, tend to force the traffic that as yet has no acceptable substitute to take a good part of the increase in the cost structure that comes along, and so on. If you were talking about making a new rate or an agreed charge or a competitive rate in the normal course that rate itself either retains traffic, either it is threatened with loss or it develops new traffic, and it is of itself a rate that contributes something over its direct or alternative cost as we might use the term. I do not see that that casts a burden on anything."
(Vol. 102 - 17134).

"Mr. Sinclair: . . . I now ask you this: in so far as there is no burden put on traffic of which there is no substitution there cannot be in that traffic any complaint. You would agree with this?

"Dr. Williams: I agree to this possible restatement which may be what you were just saying, or may not. I am not entirely certain that when a rate is made the effect of which is to hold or develop traffic in the fact of clearcut legitimate competition and that could, of course, be potential competition which is a thing which we have more and more to recognize, where the effect of that rate is to hold or to develop traffic, and it does so, in that process it makes a net contribution. Then, neither that rate nor the traffic which moves under it, in my opinion, casts a burden on anything else in the railroad traffic structure."
(Vol. 102 - 17137).

Some people seem to find it unusual that the rate on one carload is higher than the rate on another carload next to it, moving in the same train between the same points. Some people have said it does not cost any more to move a car of refrigerators than it does

to move a car of coal, so why charge the refrigerators more than the coal.

Of course, if rates were made on cost, it would not be right to have as great a difference as in fact exists, but freight rates are not made on cost. Cost merely sets the floor. Demand characteristics, differential pricing, value of service, or whatever name you want to apply to it, sets the level of the rate above the floor. It is important that no rates be below variable cost and something more. If traffic is moving at a rate less than variable cost, a burden is certainly created and an inequity immediately develops. However, if all rates were to be based on cost alone, much traffic now moving would stop moving. Moreover, a reduction in rates on traffic now moving at rates above full cost would not improve the movement of that traffic, because such traffic has demonstrated that it will move freely at the rate level being charged.

It is Canadian Pacific's position that minimum rate control is necessary. It is necessary not only psychologically, but because of the unique position in Canada of Canadian Pacific as a private enterprise competing with a state enterprise. Mr. Roberts dealt with this in his evidence (Vol. 108 - 17929).

Canadian Pacific recognizes that the independent trucker of Quebec or of Manitoba wants the assurance that Canada's major railways will not cut rates below variable cost. The phrase "predatory pricing" has been used. Minimum rate control precludes predatory pricing.

Insofar as maximum rates are concerned, these are now prescribed under the Railway Act in the equalized class rates and the equalized commodity scales. Beyond this an individual rate can be challenged before the Board. Canadian Pacific is firmly of the view that introducing maximum rates based on cost calculations is unsound and impractical.

The reasons why the various proposals for maximum rates advanced before this Commission are unsound and impractical have been

discussed earlier. One of the most experienced industrial traffic men in Canada, a man who has direct responsibility in traffic matters and who appeared before the Commission representing the manufacturers of Canada, dealt with this point as follows:

"Mr. Sinclair: Mr. Paul, the members of the Canadian Manufacturers' Association and you, personally, are large purchasers of rail transportation; that is correct?

"Mr. Paul: I would say so, as a group; one of the largest.

"Mr. Sinclair: The purchasing of this transportation is done, in many cases, including in your own company, yourself, by professional traffic men?

"Mr. Paul: Yes.

"Mr. Sinclair: And you, as an example, devote your full time to transportation matters in your company?

"Mr. Paul: Yes.

"Mr. Sinclair: And you have done so for quite a number of years?

"Mr. Paul: Yes, sir.

"Mr. Sinclair: How many years?

"Mr. Paul: Around forty in the transportation business, but as head of the transportation for my company, for seventeen years.

"Mr. Sinclair: Mr. Paul, the present freight rate structure enables the railways to have varying contributions above variable costs in the rates that are fixed; correct?

"Mr. Paul: Yes.

"Mr. Sinclair: What is your position as to the continuance of that principle in the railway pricing?

"Mr. Paul: We think it is a sound principle, and to move the maximum amount of freight I would say that is a necessity.

"Mr. Sinclair: There have been submissions to this Commission that the present method of pricing railway service as it is now carried on should not be continued, but that railway pricing should be cost orientated, or, another way it was put was that cost of service rather than value of service should be the basis of railway pricing; what is your view on that?

"Mr. Paul: Well, we would disagree with that.

"Mr. Sinclair: Disagree with what?

"Mr. Paul: That policy -- or, that principle of cost of service only being the factor to be considered in freight rates.

"Mr. Sinclair: Would you or would you not also be against a policy that required a fixed relationship to cost, that no traffic, for instance, could be priced in the freight rate structure, say, less than so much of a percentage over variable cost -- nothing could be priced less than that, and nothing could be priced more than a certain percentage over fully distributed cost? Would you also be against that?

"Mr. Paul: Yes, I don't think that system would be flexible enough to move the maximum volume of traffic."

(Vol. 54 - 9927/8)

To suggest that the present freight rate structure and the present method of railway pricing imposes an inequity is clearly not correct. That the suggestion is wrong is the view of experienced traffic men employed by industry as well as railway traffic officers - the evidence of Mr. Paul referred to above, the evidence of Mr. Cliff. Wilson, General Traffic Manager of C. & D. Sugar (Vol. 57 - 10370/1) and the evidence of Mr. Roy Halliday, representing the Canadian Lumbermen's Association and a former traffic officer of a large Eastern lumber company (Vol. 50 - 9377). Mr. Halliday said that he was in favour of value of service pricing "as it is now practised".

The effect of the maximum rate proposals advanced to this Commission would be detrimental to the national economy of Canada. They would have an adverse effect upon shippers and industry and would adversely affect the financial integrity of the railways. They would cause numerous disputes between shippers and the railways. They would result in a high degree of instability in the rate structure. They would be expensive to implement and expensive to maintain. It is the submission of Canadian Pacific that they should not be recommended.

Complaints on horizontal percentage increases

It is said by these complainants that the horizontal percentage method of applying general rate increases disturbs freight rate relationships. It is alleged it prevents shippers, whose goods move long distances, from maintaining their position in the various markets in competition with producers who may have a shorter haul and, therefore, a lower rate on the same kind of goods. Moreover, it is said to be inequitable as it does not apply increases to the same extent to traffic moving on competitive rates and agreed charges.

British Columbia, while opposing horizontal percentage increases on the grounds of undue burden on long haul and bulk traffic, could only suggest selective increases as an alternative, but advanced no suggestions as to how the selection could be achieved in a practical way. Indeed the only suggestion of British Columbia in this respect dealt with a proposal for a general revision in rate making principles, which they assumed would remove the necessity for general revenue cases in the future. This will be dealt with later.

The Alberta Proposal.

The Province of Alberta, as usual, opposed horizontal percentage increases and stated that no further increases should be allowed until ways and means have been found to eliminate from the freight rate structure all of the alleged distortions, so that in the future, no one segment of traffic and no one region will bear more than its just proportion of the burden of increased revenue needed by the railways (Vol. 36 - 5667/8).

Alberta then advanced through Dr. W.I. Little a method

of applying general freight rate increases described as "The Cost Based Rate Increase Formula". The theory underlying this proposal was that rate increases should be applied in direct proportion to increased costs of line haul and terminal services. In the example shown by Dr. Little, it was assumed that terminal costs had increased more than line haul costs and, therefore, a declining percentage increase should be applied as the length of haul increased.

This method of applying a freight rate increase could only be appropriate if the freight rates were based entirely on the cost of service, although Dr. Little would not admit this. Nevertheless, as pointed out by Mr. Edsforth (Vol. 109 - 18173/7), it would be a practical impossibility to determine the percentage of increase needed for all of the different lengths of haul in order to produce the required additional revenue. This is so because Dr. Little's formula is predicated strictly on costs as related to the Class 100 rates, and does not, in any way, take into account the volume of traffic moving at all rate levels and for all lengths of haul.

Dr. Little's formula would create the further serious problem of applying a higher percentage of increase to movements for the shorter hauls in which competition is the most intense and where the low valued traffic moves in greatest volume. Even if it could be worked out in a theoretical way, which he did not demonstrate, thereby providing for a somewhat lower rate of increase on the longer haul traffic, the short fall of revenue from that traffic would have to be made up by the short haul traffic. It is questionable whether this could be done, first, because of the greater

intensity of competition in the shorter hauls, and second, because of the inability of much of the low valued traffic to stand the additional increases due to market price inelasticity. Canadian Pacific submits that the Little theory will not measure up to practical business conditions, but can only result in massive erosion of short haul traffic.

Apart from this, Mr. Edsforth, (Vol. 109 - 19169) outlined the practical problems of determining the various percentages of increase, of applying them to the rates without a complete revision of all freight tariffs, which would take years to accomplish at substantial cost, and the difficulty of estimating the revenue yield which is an essential part of the proof in a general revenue application. These were among the considerations which prompted the Interstate Commerce Commission to reject an almost identical proposal put forward by Dr. Little in Ex Parte 206 (300 I.C.C. 671-2) to which Mr. Edsforth referred (Vol. 119 - 19696). In part, the Commission said:-

"Northwestern interests advocate a reduction in the percentages of increase as the distance increases. For distances of 400 miles or less, they would apply a uniform percentage increase; beyond 400 miles the percentage of increase would be reduced progressively as the distance increases, based on the reduction in earnings per 100 pounds per mile. The proposal is to use the mountain-Pacific scale in the territory where it applies, and to use the 28300 scale in all other parts of the country even though the 28300 scale does not apply to transcontinental traffic.

This method of increasing rates was described by Professor Little of the University of Washington. It will be referred to hereinafter as the 'Little Formula'.

.....

The proponents of the 'Little Formula' offered no estimates of the amount of revenue it would produce. The practical application of such a formula would be fraught with difficulties from the standpoint of tariff publication. It would also radically change the rate of progression of existing rates based upon distance. Many commodity rates disregard distance, to a considerable extent, and the increases on these rates would be governed by the progression of the 28300 scale, or by the progression of the mountain-Pacific scale in mountain-Pacific territory. The formula would allow the maximum percentage increase for distances of 400 miles or less, which is the principal area of truck competition, and would apply the lesser percentage increases to the longer hauls where the railroads are in a better competitive situation."

Dr. Little's formula is unrealistic in that it attempts to apply an increase that is purely cost-oriented to the basic freight rate structure which is value of service oriented. It is impractical of application because of difficulties in estimating revenue yield and preparing tariffs to implement the increase. It would result in massive erosions of railway traffic in the short haul field. It should be left in the American classroom where it was conceived.

The Saskatchewan Proposal.

The Province of Saskatchewan complained that the two most serious effects of horizontal increases lie in the higher level of rates applying to longer distances, and in the detrimental effects on long haul in comparison with short haul shippers (Vol. 89 - 15281). This is in fact two facets of the same complaint, namely, that rates reflect distance. However, Saskatchewan said that the horizontal percentage method of accomplishing general rate adjustments appeared to be the only one which could be applied by a regulatory body (Vol. 89 - 15302). In addition, Saskatchewan said it had no confidence that legislation against horizontal increases would be effective (Vol. 89 - 15282). Saskatchewan therefore recommended a national transportation subsidy, the objectives of which would:

- be consistent with established national policy but ameliorate to some extent the unequal impact of national policy;
- promote the flow of traffic and thereby foster closer economic relationship between all parts of Canada;
- mitigate to a degree the divisive effect of great distances by absorbing a portion of the transportation cost and blunt to some extent at least the sharp edge of any future general increase;
- be applied in such a manner as to avoid discriminating between different regions and thereby be regarded as a truly national subsidy one from which all parts of Canada may benefit while still redistributing the burden of transportation costs;
- not be of a nature that would simply result in the Federal Treasury underwriting railway revenue deficits (Vol. 89 - 15304/5).

Saskatchewan advanced this proposal, because it had no confidence that adjustments purely within the rate structure offered any solution to what it termed the problem facing the railways or the users of railway freight services (Vol. 89 - 15302).

In cross-examination, Dr. Britnell, the witness for Saskatchewan, suggested that the proposed national transportation subsidy could take some form or adaptation of the Maritime Freight Rates Act, and he suggested a "Western Freight Rates Act" (Vol. 89 - 15332). As subsequently expanded by Dr. Britnell, the proposed Western Freight Rates Act would:

- employ the percentages in the Maritime Freight Rates Act as applicable to Western Canada (Vol. 89 - 15332). He would start with 30% (Vol. 90 - 15396) starting first with the long-haul traffic and applying it gradually (Vol. 90 - 15397);
- apply to traffic moving into and out of the Prairie Provinces and British Columbia (Vol. 90 - 15353) and later Dr. Britnell extended this to the area west of the head of the lakes (Vol. 91 - 15538);
- not apply to agreed charges (Vol. 89 - 15333) but Dr. Britnell was not certain whether competitive rates should be included (Vol. 91 - 15539);
- traffic would be billed at the lower rate and the reduction between that rate and the proper level would be a matter for which the railways would be recompensed by the Federal Government (Vol. 91 - 15539);
- traffic carried by other carriers than rail would qualify subject to such carriers coming under the central regulatory body proposed by Saskatchewan and complying with the rules and regulations (Vol. 89 - 15333/4).

In describing the proposed subsidy, Dr. Britnell said:

"I am not quite sure I would say it is a national subsidy to the whole of Western Canada's shippers and receivers. I would prefer to think of it as a national subsidy compensating the western region for some of the effects of national policy that have militated against it."
(Vol. 91 - 15539).

Before the Turgeon Royal Commission, Sankatchewan made a very similar proposal, which was rejected for these reasons:

"No case has been made out for the Compensation Subsidy. It is to be noted that although applicable to both Alberta and Manitoba neither of these provinces advocated it. The basis of the claim really is the 'long haul' and a subsidy is not the remedy.

The analogy to the Maritime Freight Rates Act does not exist; the reasons given for the passage of that Act were: (a) pre-confederation promises; (b) restoration of rates to the level that had been established to give effect to these promises; and (c) the additional mileage of the route taken by the Intercolonial Railway for strategic purposes.

The adoption of the proposal would have the effect of creating still more anomalies."
(Turgeon Report, p. 158)

While there may be segments of the Western Canadian economy which are in difficulty, there are other segments which are in a strong financial position. To suggest a general subsidy involving millions of dollars without a demonstrated need is wrong. To attempt to use the freight rate structure to effect some general redistribution of wealth is also wrong.

The Manitoba Proposal.

The Province of Manitoba, taking its historical exception to the application of horizontal percentage increases (Vol. 91 - 15567) suggested an alternative method whereby a general increase in freight rates would be arrived at by deriving part of the additional revenue from an increase in cents per hundred pounds and the remainder by way of a percentage increase. In this way, Manitoba suggests some recognition would be given to the difference in the increases in terminal costs versus line haul costs.

Under the Manitoba formula the increase in terminal costs would be recovered by a cents-per-hundred-pounds increase to be added to each rate and the line haul costs would be recovered by a horizontal percentage increase applied to the rate prior to any increase. Realizing that this formula would increase unduly the rates on short hauls and on low rated commodities, Manitoba proposed a modification. Under the modification, rates would be increased

by the lesser of the formula or a straight horizontal percentage increase of a higher amount. The higher percentage horizontal increase was apparently somewhat arbitrary. Mr. Stechishin, the witness for Manitoba, said:

"This again, I admit is an arbitrary figure. The formula cuts it in half and the modification doubles the percentage. Now, we are not tied to that."
(Volume 93 - 15928)

By this, he apparently meant that if, in the particular circumstances, a straight horizontal percentage increase of 20% was indicated, under the Manitoba formula the portion to be raised by a horizontal percentage increase would be 10% (half the 20%), but under the modification the higher percentage would be 40% (double the 20%).

While Manitoba's formula was calculated on a mathematical basis so as to yield theoretically the same revenue increase as from the straight horizontal percentage increases, no allowance was made for the short fall of revenue which would result from the modification made by Manitoba for the lower rated traffic. Mr. Edsforth, in his review of Manitoba's proposal pointed out that the calculation should be based on Canadian Pacific revenue and tonnage rather than that from all railways which would change the factors and considerably enlarge the area in which the modification would apply (see Exhibits 163 and 164; Vol. 109 - 18081/3).

While Mr. Stechishin had given as his opinion that this modification would not occasion any serious loss of revenue, Mr. Edsforth estimated that the loss would be quite substantial and would probably require an additional two to four percentage points on the revenue to be obtained from the percentage increase. Later (Vol. 119 - 19754) Mr. Edsforth stated that from a partial check of some of the heavier moving commodities calculation showed a revenue reduction of some \$4 million, because of the modification of the Manitoba formula. This could only be made up by further increasing the percentage. In the final analysis, the formula would probably work itself down to the position where the end result would be little if any different than that under a

straight horizontal increase. Eventually, the long haul traffic would be no better off, but in the meantime, serious dislocations to shippers and railways would have occurred.

It was Mr. Hadsforth's assessment that the railways' revenue position would be seriously affected under the Manitoba proposal (Vol. 109 - 18097). In fact, he said it would not be properly protected (Vol. 118 - 19594).

Mr. Stechishin agreed that his proposal had never been tried in a general revenue case but he thought it should be tried and if it did not work, he said "at least you have experimented" (Vol. 93 - 15936). The suggestion that such type of experiment should be tried on so important a matter cannot seriously be accepted by those who are responsible for the result, particularly when a practical test of the application of this formula makes it clear that the results are certain to be unfair, not only to the railways but to many shippers. It is true adjustments could be made and as Mr. Stechishin himself said, if it did not work out, then the railways could then go after another increase (Vol. 93 - 15936). In the meantime, however, much permanent damage inevitably would have been done.

It is an essential assumption of the Manitoba proposal that competition is not more intensive in the short haul field (Vol. 93 - 15935). The correctness of the assumption of Manitoba as to the impact of competition is basic to their further assumption that their alternative would not impair rail revenues. Mr. Stechishin said:

"Any alternative scheme for the application of rate increases must take into consideration two major factors; firstly, the impact on the shippers and secondly, that any resultant scheme does not impair rail revenues".
(Vol. 91 - 15612)

If the assumption as to the effect on short haul traffic is unsound, with the consequent result that railway revenues are impaired, the Manitoba proposal is invalid. As mentioned, Manitoba

itself indicated some concern about short haul traffic by introducing its modification.

It was Mr. Edsforth's opinion that competition was much more intense in the short haul (Vol. 109 - 18086; Vol. 118 - 19585). Mr. J. M. Roberts said that competition from trucks was most intense on distances up to 300 to 400 miles (Vol. 24 - 3450).

Mr. Stechishin (Vol. 96 - 16312) said that he was basing his view that competition was not more intensive in the short haul field on a study of the Board's Waybill Analysis. Mr. Edsforth dealt with this contention in detail in his rebuttal evidence (Vol. 109 - 18086 to 18089). In speaking to this matter, Mr. Edsforth was giving his experience as a railway traffic officer, and also from his experience as a traffic man for other types of transportation, specifically motor trucks and water. On the question of using the Board's Waybill Analysis as Mr. Stechishin suggested, Mr. Edsforth's evidence was:

Mr. Sinclair: Now, what do you think of a study based on the Board's waybill analysis to show that your experience is not giving you the correct answers -- let me put it that way?

Mr. Edsforth: I do not really see how a study of the waybill analysis can give you that result because the waybill analysis, after all, only shows what you handled. It does not show what you did not get, and that is where you see the incidence of truck competition.

Mr. Sinclair: Can you, by looking at rate changes in the area by mileage blocks, say up to 200 -- 200 to 400, 400 to 800, 800 to 1,000 -- can you do it that way?

Mr. Edsforth: No, not necessarily, because traffic mix has some effect there - a very large effect. You would have to examine individual rates and individual volumes of movement to really give you the story. As I say, that only gives you part of the story: it only shows what you handled, and that is certainly only half of it."
(Vol. 109 - 18088/9)

On the point as to the area of intensity of competition, the finding of the Interstate Commerce Commission in Ex Parte 206 (300 I.C.C. 671-2) quoted earlier in this summation when we were considering the Little proposal, is significant:

"The formula would allow the maximum percentage increase for distances of 400 miles or less, which is the principal area of truck competition, and would apply the lesser percentage increases to the longer hauls where the railroads are in a better competitive situation.

Mr. Stechishin not only thinks that the experience of Mr. Edsforth and Mr. Roberts is misleading them, but he also thinks the Interstate Commerce Commission is wrong. Obviously, the service factor of truck transportation is more marked in the short haul field, and this in itself indicates the area of intensity.

Province of Ontario

The Province of Ontario and several witnesses appearing on behalf of different regions in the Province, as well as certain shipper associations, opposed horizontal increases. However, little in the way of alternative proposals was advanced. The witnesses for the Province itself indicated that they had not made a sufficient study of the rate structure to determine what other method might be better.

The Southwestern Associated Chambers of Commerce suggested a higher percentage increase for the short hauls and a lower percentage increase for the long hauls, to be applied to all commodities although admitting that there might be difficulty in applying the greater increase to the highly competitive short haul traffic (Vol. 43 - 7363/4). Obviously they were prepared to admit that an impairment of railway revenues would result from such a proposal. This may be contrasted with Manitoba.

The Canadian Electrical Manufacturers Association made a suggestion of a graduated percentage increase declining as distance increased. Their proposal was confined to class rate traffic only, evidently having regard to their own particular situation only and without considering the general effect throughout the country on other shippers or the railways' revenue (Vol. 44 - 7484).

Other interests such as the Northwestern Development Association and the Joint Transportation Committee of Fort William and Port Arthur Chambers of Commerce, suggested that flat increases per 100 lbs. would be preferable to horizontal percentage increases (Vol. 70 - 12542). Again apparently, no consideration was given to the effect this would have on the demand of different types of traffic nor to the extent that

such increases would bear most heavily on the low value and short-haul traffic such as pulpwood.

None of the witnesses appearing for the Province of Ontario or associations or areas in the Province had made any real study to determine what kind of alternative to horizontal percentage increases would be practicable or what inequities might result from such alternatives.

Province of Quebec

In its recommendations, the Province proposed that "legislation be passed to compel the railways to readjust agreed charges, such readjustment to be equal to the percentage of the horizontal increase". (Vol. 125 - 20763). The French version indicates the adjustment to be taken at the terminal period of the contract. (Vol. 124 - 20531). In cross-examination on this point, (Vol. 126 - 20882-7) Col. Harold indicated that the view of Quebec was that the agreed charge rates should be increased and downward adjustments made where necessary. However, he prepared to admit (Vol. 126 - 20887) that under the legislative change proposed, there would be exceptions under special circumstances.

Percentage increases can only be applied automatically to agreed charges where they contain escalator clauses. At present, where contracts do not contain such clauses, individual negotiations for increases are made. The difficulty with Quebec's proposal is that in cases that would not come within the exceptions they were prepared to make, the only recourse to the railways would be to cancel the agreed charge and not reinstitute it unless the shipper was prepared to sign at the higher rate. This would place a severe limitation upon the use of agreed charges and place the railways in a much more restrictive position than that of their competitors.

Maritime Provinces

The provinces of New Brunswick, Nova Scotia, Prince Edward Island and Newfoundland all complained of the effect of horizontal increases, largely on the grounds that their competitive position had been worsened in comparison with other producing areas. None of the provinces suggested any alternative method.

It might be noted that if the basic presentation of the Maritime Transportation Commission is accepted, the result would be

the elimination of rate differences as between shipments moving between points in Central Canada and shipments from the Maritimes to Central Canada, and artificially by statute, to convert these average rate differences into competitive rate relationships.

The Effect of Horizontal Percentage Increases in Fact

Complaints against horizontal increases are: that they disturb the spread between rates; that they are only applied to a part of the rate structure; that they do not reflect differences in line-haul and terminal costs; and that they burden long haul traffic to a greater degree than is justified.

For years, many, including some who should have known better, have said that horizontal percentage increases widen the spread between rates and thus disturb competitive rate relationships. This is wrong. A competitive rate relationship exists when rates from different origins are the same or when there are "established rate differentials". In the first instance, horizontal percentage increases obviously maintain the competitive rate relationship. In the second instance, they are maintained by way of exception.

Horizontal percentage increases raise proportionately all rates to which they are applied. In doing so, higher rates go up more than lower rates and the difference in cents between the two rates becomes greater. This is not a disadvantage of the horizontal increase method, but an advantage. A given rate is higher than another rate because of value of service considerations, as well as cost. If a higher rate is not increased more in cents than a lower rate, the relative demand characteristics and relative cost impacts are automatically disturbed. The fact that rates are increased horizontally and then adjusted downwards as the demand characteristics assert themselves is the application of Ripley's principle that the test of a rate is to put it into effect. This is the test of the market or the measuring of demand characteristics.

Any general increase, whether it be horizontal, flat, combination, or any other method, can only apply to a part of the rate structure. First, there is that body of rates which moves traffic at international and related rates. Mr. Edsforth described this traffic

(Vol. 109 - 18153). Increases on such traffic do not take place at the same time as general increases are applied in Canada, but are applied concurrently with general increases in the United States after the specific approval by the Board of Transport Commissioners. To attempt to increase them in any other way would adversely affect Canadian shippers or preclude Canadian railways from partaking in increased revenues which would be charged by American carriers under joint through rates. Another part of the rate structure which has not been increased in general revenue cases is the statutory grain rates. This will be rectified if the proposals of the railways now before the Commission are implemented.

The myth has grown up that agreed charges and competitive rates are not subject to general percentage increases. Competitive rates are increased at the time of general rate increases if the competitive factors which control their level permit. If the competitive factors which control their level do not permit, to increase these rates would be a disservice to the balance of traffic and would require a higher increase because of the loss of the revenue over variable cost that such traffic provides. Where competitive rates are increased at the time of general revenue cases, the attrition and erosion is substantial because these rates are extremely sensitive to competitive factors. Moreover, individual adjustments in this section of the rate structure are made from time to time as competition requires.

Agreed charges are contract rates. Escalator clauses, both absolute and modified, are contained in many contracts. The number of contracts containing such clauses is increasing. Where there is not an escalator clause in the agreed charge, a rate increase is a matter of individual negotiation. In some cases, no increase can be secured. If an increase were to be applied notwithstanding lack of prior agreement of the contracting shipper, the contract would be abrogated and a greater burden would thereby be cast upon the balance of traffic.

Before this Commission, for the first time, the suggestion has been made that horizontal percentage increases are deficient in that they do not reflect the differences in cost changes in terminal and line

haul movements. The basis of this suggestion is different labour intensities in the two types of movement. The first point to be noted is that all rate increases are not caused by wage increases. Increases in material prices and in income and sales taxes, neither of which are related to labour intensity, have been major factors in the general freight rate increases in the post World War II period. In regard to greater labour intensity in terminal movement, it is often overlooked that terminal work is required not only at origin and destination, but also at intermediate terminals. Here also, the fact of terminal vs. line haul in relation to length of haul has been taken into account in the taper, which is basic to the various types of class and commodity rates.

If the line haul vs. terminal approach was to be applied in general increase cases, it would disturb arbitraries. The use of arbitraries is important and they are an established part of the freight rate structure (Vol. 23 - 3292). Particularly are they important to the Maritime Provinces. Under the Little Formula for instance, as was shown by Mr. Edsforth (Vol. 109 - 18172), rates from Saint John to Windsor, Ont. would be increased more than the rate from Halifax.

The old saw that horizontal increases place an unjust burden on the long haul has been said so often that people are prepared to believe it without even thinking whether it is right. Of course, no one has been able to define long haul. Mr. J.M. Roberts pointed this out in his evidence (Vol. 106 - 17630). Counsel for Alberta has been asked to try in case after case. His experience tells him that what is long haul for sugar beets is short haul for sugar. What is long haul for crushed stone is short haul for coal. Of course, geographically, long haul is a matter of degree. It has been interesting, down through the years, to have heard Counsel for Alberta claiming that his Province was at the apex of the freight rate structure, and having Counsel for Saskatchewan challenge him and say, "Not you, me".

The Province of Quebec, in its submission to this Commission, dealt with regional complaints as follows:

"The point we wish to make is that notwithstanding some interruptions, all parts of Canada have benefited from the rapid economic expansion of the Canadian economy." (Vol. 124 - 20574).

.....
 "Perhaps the time has come to stop complaining about the injustice of Confederation, with people of all parts of Canada joining in an effort to build a bigger and better Canada, for the benefit of the people in every province of our land." (Vol. 124 - 20579).

In Minister of Agriculture for B.C.v. C.N.R. et al., (1959)

S.C.R. 229 at 238, the Hon. Mr. Justice Ivan C. Rand, a jurist with much experience in freight rate matters, stated:

"The scheme of the section (336) thus meets the obvious demand to put all sections of the country on an equality in the transportation of goods while preserving the structure of classification of traffic and rates as it has been built up in the course of a century."

Only by applying horizontal percentage increases and adjusting them to take care of disturbances arising from disposition of fractions, can the equality so avidly sought by the Western Provinces, which resulted in the enactment of Section 336 of the Railway Act, be maintained.

While those who are opposed to horizontal percentage increases are undoubtedly sincere in advancing their alternative proposals, they do not appear to have studied the matter sufficiently to see where their suggestions would eventually lead. Very little consideration appears to have been given to the position of those shippers whose rates would be adversely affected by the alternative plans. Manitoba did make a gesture in this direction by modification of their plan but even this modification would increase the rates of many shippers by double the amount that they would pay under a horizontal increase.

Those shippers whose rates would be increased by greater amounts under the alternatives proposed would undoubtedly expect the railways to deal with them and make some adjustments. In the final analysis, these adjustments would result in long haul traffic, assuming the same increase as it would have secured initially under horizontal increases, or perhaps even more, because of traffic erosion in the short haul field during the adjustment period. In the meantime, the disturbance of the business of many thousands of shippers and the effect on

the railways revenue might well be critical.

Canadian Pacific has explored many alternative methods of applying freight rate increases, including all of those advocated before the Commission. Canadian Pacific has tested and examined them in detail to see what the effects would be and for reasons which were fully supported by Mr. Roberts in his evidence, has been forced to the conclusion that none of these methods would work as well in the overall picture as the present horizontal increase method. (Vol. 106 - 17648).

The railways, unlike regional interests or particular shippers, must consider the matter from the standpoint of all shippers and all regions as well as from the standpoint of their own revenue needs. The alternatives suggested, have failed to meet the practical tests which must be made to determine their soundness.

The general attitude appears to be "we do not like horizontal increases, lets try a new experiment which may be better, if not, we will go back to horizontal increases". This approach was tried after the Turgeon Royal Commission with most unsatisfactory results. Freight rates are too important to be the subject of pragmatic experimentation.

The horizontal percentage increase method is unpopular and it has been maintained only because no better method has been found. Mr. J.M. Roberts said:

"I know that the horizontal percentage increase method is not popular. I am convinced that any other method, after it had been applied, would be even less popular with the majority of shippers." (Vol. 106 - 17648).

"I wish to assure the Commission that Canadian Pacific is supporting the horizontal percentage increase method because it is convinced that it is the fairest and most equitable method for shippers and railways alike." (Vol. 106 - 17650).

Mr. Edsforth emphasized the position of Canadian Pacific:

"Mr. Sinclair: Are you wedded to the horizontal percentage increase method?"

"Mr. Edsforth: Not at all, I certainly have not got a closed mind on it and if I could find a method that would do a better job, then I would want to adopt it, but I have not seen any yet, and we have examined quite a few, that would do a job as well as the straight percentage increase."
(Vol. 109 - 18177)

Is there an inequity arising from the horizontal percentage increase method?

In the post World War II period no issue has received as much consideration by the provinces, the railways, the Board of Transport Commissioners and other tribunals as the issue of the method of applying general increases in freight rates. In the first post-war general revenue case, an application was made to the Supreme Court of Canada for a ruling that horizontal percentage increases were outside the jurisdiction of the Board. The Supreme Court dismissed the application ((1947) 60 C.R.T.C. 255). In each of the subsequent general revenue cases, in appeals to the Cabinet and before the Turgeon and this Commission, the claim that horizontal percentage increases created inequities has been advanced.

It is of significance that the claim that horizontal percentage increases are unfair and that they create inequitable burdens is most readily accepted by those who have not had the time to fully familiarize themselves with the freight rate structure and how it operates. After analysis in the cases before the Board, the allegations that the percentage increase method should not be used were rejected.

Many who voiced complaints of the horizontal increase method have no alternative to suggest. As has been demonstrated by the analysis made in the record, where alternatives were advanced and tested, they could not stand up. As has been shown, if some of the alternatives were implemented they would be even less popular with the majority of shippers than the horizontal percentage increase. It has been shown that the alternatives suggested would not do the job as well as the straight percentage increase. It is not said that the horizontal percentage increase method is the only method, but it is the position of Canadian Pacific that it is the only method which

is practical and which implements in the fairest possible way the obviously unpopular necessity of higher freight rates. Notwithstanding numerous analyses, it is submitted that no inequity arising from horizontal percentage increases has been demonstrated.

Mr. Frawley has made much both before this Commission and in other places, of what in this proceeding is Exhibit 52. This exhibit demonstrates how easy it is to present a case against horizontal percentage increases when in fact the presentation will not stand up. If the exhibit told the whole story, a prima facie case would have been made, but it does not tell the whole story if the reasons behind the figures and the groupings on the exhibit are understood. Part of the story behind the figures is set out in Exhibit 93 filed by Mr. J. M. Roberts.

The impact of general increases in freight rates is difficult to measure. With the data available, an attempt was made by Canadian Pacific to show the impact and is set out in Exhibit 162. This exhibit is based on the Board's Waybill Analysis, which is a 1% sample of only a part of the carload traffic moving within Canada. The sample is not stratified. Mr. Mauro, Counsel for Manitoba, attempted to show that Exhibit 162 could not be relied on. His cross-examination of Mr. Edsforth on this exhibit will be found in Vol. 118 - 19527 et seq. In re-examination, Mr. Edsforth (Vol. 119 - 19734 et seq.) demonstrated why the approach of Mr. Mauro and the figures that he advanced could not be used to support his position.

Canadian Pacific does not say that Exhibit 162 gives a final answer, but with the data available, it does indicate that the impact of the 17% horizontal increase which became effective on December 1, 1958, did not place any undue burden on any region or on any particular type of traffic.

Mr. Mauro, in his cross-examination of Mr. Roberts, (Vol. 107 - 17845 et seq.) attempted to show that while the percentage yield from the 17% increase indicated similar impact within Ontario

and Quebec as within Western Canada and between the West and Ontario and Quebec, the absolute increase in cents per hundred pounds varied considerably and thereby constituted a difference in the impact in different parts of the country. Mr. Roberts (Vol. 107 - 17853) showed that in relation to the work done (ton miles of service performed) the traffic moving within Ontario and Quebec, and from Western Canada to Ontario and Quebec, bore approximately the same charges per unit as traffic moving within Western Canada and from Ontario and Quebec to the West. That is to say, in relation to the work done, the freight rate increase was equitably distributed. Clearly, there is no unequal burden here.

An inequity in the freight rate structure can be alleged; it can be thought to exist; but surely this is not enough. Surely it has to be proven. There is no proof before this Commission that horizontal percentage increases create an inequity; indeed the proof is to the contrary.

The proposals advanced as alternatives to the horizontal percentage increase method would adversely affect the national economy of Canada. They would place an undue burden on short haul low valued commodities. They would artificially increase competition for the railways in the short haul field. They would prevent expeditious handling of general revenue cases by the Board. They would adversely affect the financial integrity of the railways. It is the submission of Canadian Pacific that they should not be recommended.

The British Columbia Proposal

The proposal of British Columbia for a new freight rate structure does not fall either within the category of maximum rates or the alternatives to horizontal percentage increases.

British Columbia proposed a new cost-oriented railway rate structure prescribing:

- minimum rate schedules for all carload traffic;
 - maximum rate schedules for all carload "captive" traffic;
 - schedules of actual rates for less-than-carload traffic
- (Vol. 76 - 13396).

It is important to note that under the British Columbia proposal, the Board of Transport Commissioners would have to give prior approval to the minimum rates, by route, for all carload traffic, whether "captive" or "non-captive", and in addition, give prior approval to the maximum rates on traffic designated "captive". When you consider the multitude of rates and commodities of different characteristics moving over varying routes, this is a fantastic work load. Moreover, to it must be added prior approval by the Board for the actual rates to be charged on all less-than-carload shipments, which again, under the British Columbia proposal, would reflect cost characteristics of such shipments. The detail in less-than-carload determination in and of itself is enough to make one stop.

British Columbia proposed a new classification of all carload merchandise in which cost factors would be the criteria to be considered when assigning goods to various classes (Vol. 76 - 13397). Value of commodity would be excluded in the classification (Vol. 79 - 13951).

The foundation of any rate structure is the classification. It is basic to the British Columbia proposal that a new classification be established. This in itself is a tremendous task involving years of effort. Under the existing freight rate structure the maximum rates, that is the class rates, are tied in with the classification and the classification and the concomitant class rates are the foundation of the structure. The new classification envisaged by the British Columbia proposal would eliminate value of the commodity as an element in classification and the classification would be tied in with minimum rate scales to form the foundation of the new freight rate structure.

The Canadian Freight Classification No. 20, which became effective March 1, 1955, took over two years to complete, working from an established base. Literally millions of calculations are involved in setting up the tariffs to form the existing foundation of the rate structure.

The classification of commodities is so important to shippers it is essential that extended discussions take place between the railway classification committee and individual shippers. One can imagine the length of these discussions where practical traffic men are faced with a re-classification of their commodities obviating the value of the commodity as an element in classification.

It is of great significance in the submission of Canadian Pacific that although British Columbia has complete jurisdiction over the Pacific Great Eastern Railway and over intra-provincial trucking, it has not attempted to prescribe its proposal within its own transportation jurisdiction. For example:

"Mr. Sinclair: If the province of British Columbia is interested in having proper elements of transportation resources based upon cost-orientation, transport media, why did they not introduce this cost-oriented concept of rate-making where they had full authority to do so, namely, intra and inter-provincial trucking?

"Dr. Hughes: This is only published in 1960, but when they read it maybe they will have some further thoughts on trucking in British Columbia."
(Vol. 79 - 13957).

It should also be noted that British Columbia is in the fortunate (or unfortunate) position of being the sole owner of a railway - the Pacific Great Eastern. It is completely within the power of British Columbia to test their new rate-making concepts on that railway. While this was brought to the attention of the Commission and to the Province of British Columbia many months ago (Vol. 80 - 14063) there has been no announcement of the inauguration of a cost-oriented rate structure on the Pacific Great Eastern. There are obvious advantages in introducing the British Columbia experiment on the Pacific Great Eastern. The owners of the railway - the Province - are very close to the shippers and any dislocations

or dissatisfaction of the shippers could be brought to the attention of the owners quickly and effectively. Moreover, and this is of substantial importance it is suggested, any deterioration in railway revenues arising from the scheme would be the sole responsibility of the proponents of the scheme.

That one of the major shipping groups in British Columbia is not convinced of the validity of the British Columbia proposal was indicated by the reaction of the Council of Forest Industries of British Columbia. Their letter concerning the submission of British Columbia is part of the record (Vol. 79 - 13934 et seq.). The following extract from the letter is significant:

"While it is ready and willing, however, to support any action that it feels will result in lower freight rates for the lumber industry and other coast shippers in British Columbia, the Council of the Forest Industries is not prepared, at this time, to give its unqualified support to the portion of the submission of the Provincial Government advising the 'Cost-of-Service' theory in rate-making. Many experienced traffic men in the employ of our member companies are worried about the practical application of such a theory and these experts have even more serious doubts as to whether a strict application of such a concept will result in lower rates to shippers of lumber and lumber products from the coastal region."
(Vol. 79 - 13935/6).

The experienced traffic men of Canadian Pacific found grave difficulties in the British Columbia proposal, difficulties not only for the railways but the people they serve.

Mr. J.M. Roberts said the British Columbia proposal was "cost oriented but not cost determinant in all aspects" (Vol. 106 - 17655). There exists some uncertainty as to the British Columbia proposal because the formal submission was substantially modified during cross-examination of Dr. Hughes and in certain respects there is conflict between the evidence of Dr. Hughes and the statements of counsel for British Columbia explaining the proposal.

As to the ceiling under the British Columbia proposal, Mr. Roberts said:

"A proposal with a completely flexible ceiling would enable traffic to move freely and the railways to remain financially sound. The proposal of a cost oriented system with a rigid ceiling would inevitably result in financially unsound railways or a very high ceiling."

(Vol. 106 - 17655).

Mr. Brazier, counsel for British Columbia, outlined the proposal as follows:

- no rate should be less than variable cost;
- no ceiling on competitive traffic;
- maximum rates applicable to "captive" traffic would be either fully distributed costs or fully distributed costs plus something;
- the maximum rate on "captive" traffic could be raised only when costs went up.

As to the fixing of the amount over fully distributed cost, Mr. Brazier said:

"Well, we are going to leave that to the Board of Transport Commissioners. This may have to be 10% or it may have to be 15%.
(Vol. 106 - 17782).

There are a number of keys to the British Columbia proposal. The three most important would seem to be: the delineation of "captive" traffic; the determination of the costs to arrive at the base of the maximum rates on "captive" traffic; and the principles that would be applicable in the Board's determination of the "something over" to be added to the maximum rates on "captive" traffic as determined by cost.

Mr. J.M. Roberts said that the distinction between "captive" and "non-captive" traffic "is a theoretical concept and does not differentiate between traffic movements in any practical way".
(Vol. 106 - 17655).

Dr. Hughes recognized this difficulty and attempted to define "captive" traffic. His definition was:

"...traffic for which there is no reasonable competition other than rail. This would include carload movements now taking place at non-competitive commodity and class rates as well as traffic for which the only competition was another railway."
(Vol. 76 - 13403)

During cross-examination Dr. Hughes extended this definition to exclude from "captive" traffic, traffic moving under rates to meet external market competition:

"Mr. Sinclair: Yesterday, Mr. Hughes, I was asking you about market competition and why you would not recognize market competition as a factor to take a commodity out of your designation of captive traffic and why you gave recognition only to carrier competition and not to market competition in this proposal of yours. I left it so that you could consult Mr. Guest and your other advisers and consider your answer, and I understand you have done so.

Dr. Hughes: Yes.

Mr. Sinclair: Would you please give the Commission your answer?

Dr. Hughes: In the position of British Columbia market competition would be recognized, and the market competition that would be recognized to bring the traffic into the competitive class would be market competition which is presently recognized in the Canadian freight rates structure, plus such other market competition which would be recognized by the Board of Transport Commissioners."
(Vol. 80 - 13980/1)

The delineation of "captive" traffic immediately raises substantial problems and indicates continuing disputes between shippers and the railways as to the designation of particular traffic movements.

The basic factor delineating captive and non-captive traffic as British Columbia defined it would be reasonable competition by some media of transport other than rail or external market. Mr. Roberts said:

"It seems to me that there could be quite a few disputes as to whether any given set of conditions amounted to 'reasonable competition' or not including service consideration."
(Vol. 106 - 17656)

It is obvious that what would be involved in a dispute would be a determination of the cost of the competing mode of transport, the scheduled service, the reliability of the service and a myriad of other intangible factors. On external market the intensity of the foreign competition, and comparative price and quality as well as

service considerations would have to be determined.

Mr. Roberts' view was explained under cross-examination by

Mr. Brazier:

"Mr. Brazier: Well, if the point had to be decided, do you not think the Board of Transport Commissioners could determine the fact as to whether or not competition did exist? They have had more difficult things to decide than that.

Mr. Roberts: Reasonable competition is pretty hard to define, in my estimation; what is reasonable to you is not reasonable to me.

Mr. Brazier: The same as just and reasonable rates, what is just and reasonable to you is not just and reasonable as far as I am concerned -- no more difficult a problem than that?

Mr. Roberts: I would say difficult, yes, it is a more intangible thing.

Mr. Brazier: More intangible?

Mr. Roberts: Yes, sir."

(Vol. 106 - 17772-3)

"Mr. Brazier: The big criticism, the important criticism you have to make, I take it, on the B.C. scheme is its impact on the financial soundness of railway operations?

Mr. Roberts: No, Sir.

Mr. Brazier: Which phrase you use on page 43 of your brief?

Mr. Roberts: No, Sir: There is also the question of what I consider would be continual argument as between the shippers on the railway and the railways themselves as to what constitutes competitive traffic and what constitutes non-competitive traffic.

Mr. Brazier: You think that is an insoluble problem?

Mr. Roberts: I think it would certainly be quite a difficult problem. I think we would all be down here in Ottawa before the Board arguing this point twelve months of the year, or pretty close to it.

Mr. Brazier: Twelve months of the year?

Mr. Roberts: Yes, sir."

(Vol. 106 - 17783-4)

Mr. Roberts in his discussion with Commission Counsel agreed that certain traffic was now rail motivated but indicated that such traffic would not, in his view, necessarily come within the designation "captive" as advanced by British Columbia.

Mr. Cooper: There is a class of traffic, is there not, for which in fact there is no competition?

Mr. Roberts: At the moment. At the moment, for example, there would be heavy machinery.

Mr. Cooper: Would you apply the word 'captive' to that traffic, or what word would you use to describe it?

Mr. Roberts: I would say that at the present time the rail is the most satisfactory method of handling the shipment.

Mr. Cooper: You cannot designate that type of traffic by any term? Obviously, you do not think the word 'captive' should be applied to it? Is there any other term by which it should be designated?

Mr. Roberts: I do not think so, sir. It is just traffic moving by rail at the present time, but I do not know, under different circumstances it might not move by some other form or from some other place in the future."
(Vol. 106 - 17694)

Endless troubles and difficulties with the shipping public were envisaged by Mr. Roberts arising from the fact that traffic moving at competitive rates above the prescribed captive traffic ceiling would result in competitive rated shippers endeavouring to prove to the Board that their traffic should be designated "captive". The extent of this difficulty was indicated by the following:

Mr. Brazier: Would you think that you have a great batch of competitive rates today which are above fully distributed costs?

Mr. Roberts: In my estimation certainly enough to cause us concern with a proposal such as this."
(Vol. 106 - 17772)

The second key to the British Columbia proposal referred to earlier was the determination of cost to arrive at the base of the maximum rates on captive traffic. The myriad of cost studies that would be necessary under the British Columbia proposal must be clearly understood. To arrive at the cost base for the British

Columbia proposal it would be necessary to develop route costs. This would be an undertaking of great magnitude and involve very great expense. To maintain it to take care of shifting traffic patterns and density would also be most burdensome. As Mr. Roberts put it:

"This would mean developing costs for all movements all over Canada, terminals and other different routes. That is your plan."
(Vol. 106 - 17778)

The view of Mr. Roberts as to the difficulty of securing the cost data was challenged by counsel for British Columbia.

"Mr. Brazier: You do not have to bother at all with any of the agreed charges, you do not have to bother at all with any of your competitive rates, you do not have to bother with your international rates. You have got your class rates and some non-competitive commodity rates. Now, I suggest to you it is certainly no insuperable task or even a particularly difficult task for the C.P.R. to make some estimate of what their loss of revenue would be.

Mr. Roberts: In my estimation it would be a tremendous task. That is all I can say to you."
(Vol. 106 - 17779/80)

Under the British Columbia proposal there would disappear from the freight rate structure class rates as ceilings for all traffic; commodity rated or competitive rated designations of traffic; the long haul - short haul provisions of the Railway Act; equalization of class and commodity rates; ultimately unjust and undue preference prohibitions; branch line rates being on the same level as main line rates; equality of rates over different routes between captive and non-captive traffic and a change in the determination and the adjustment of rates in regard to the permissive level of net rail income of Canadian Pacific. These various points were covered in cross-examination by a number of counsel, but are brought together in Commissioner Mann's discussion with the witness
(Vol. 80 - 14048/62).

The third key of the British Columbia proposal referred to earlier is the principles that would be applicable to the Board's determination of the "something over" to be added to the

maximum rates. Before dealing specifically with this it must be noted that once the maximum rates were fixed under the British Columbia proposal, they could only be increased when there had been a change in costs. British Columbia limited "costs" to wage increases, tax increases and the like. Increases necessary from "changing conditions", which is now a basic part of the regulatory law, would disappear. That is to say, differences in density and traffic mix would no longer be taken into account in adjusting the maximum rates.

British Columbia did not attempt to deal with the crucial issue of how the "something over" would be determined. If the ceiling was to be placed very high or if it was to be based on what was required to keep the railways financially sound, the maximum rates and the rates actually being charged would not be very much different from what they are today.

The conclusion of the Province of Saskatchewan was that a cost-oriented freight rate structure would not be beneficial. Dr. Britnell, the spokesman for the Province, expressed it this way:

"Thus it seems improbable that such a basic change in the rate structure would, in itself, enable the railways to provide lower transportation charges for Canada as a whole or that it would effect a more equitable distribution of the costs of railway service."

(Vol. 89 - 15267)

Canadian Pacific agrees with this view of Saskatchewan provided that Canadian railways are to be kept financially sound. If a rigid cost ceiling, without taking into account the necessity for preserving the financial integrity of the railways, were to be put into effect, of course the Canadian Pacific as a private enterprise would disappear and millions of dollars added to railway transportation deficits in Canada.

Of the large number of witnesses who appeared before the Commission, no witness, with the exception of Dr. Winch of Saskatoon, supported a cost-oriented basic rate structure. Trans-

portation people both in the theoretical field and the practical field have recognized that costs of rail transportation are becoming ever more important. It is a long step from this position to making costs the sole or major determinant of rate levels.

Canadian Pacific does not think that railway pricing in practice can be as rigid as the British Columbia proposal envisages. Mr. Roberts made this clear:

"Mr. Brazier: I would suggest to you, Mr. Roberts, your easiest way out of your difficulties with your customers would always be just to say, 'Well, there is the cost of handling that traffic'?"

Mr. Roberts: I am sorry, but it is not that simple.

Mr. Brazier: It is not that simple?

Mr. Roberts: No."

(Vol. 106 - 17771)

If the traffic officers of Canadian Pacific are wrong, if the other transportation people who do not believe in a cost-oriented basic freight rate structure are wrong, British Columbia has within its grasp the opportunity of making a controlled experiment on the Pacific Great Eastern. If they implemented their proposal as advanced to this Commission on the Pacific Great Eastern, Canadian Pacific wishes to assure this Commission that its traffic officers and management would watch it, follow it and study it with great interest and if there were in the scheme mistakes which over time were rectified, and the scheme was shown to be a practical scheme, both from the standpoint of shippers and the railway, Canadian Pacific would be glad to adopt it. Until it is shown that it would work, Canadian Pacific is firmly opposed to the proposal.

Use of the freight rate structure to overcome economic disabilities.

Because of the resource base and concentration of population, certain areas of Canada have economic disabilities. The economy of some areas is based on extractive industries producing low valued bulky commodities which are rail transport motivated and must move substantial distances to manufacturing centres or to export positions. To some degree the economic disabilities above referred to exist in each of the Western provinces and in the Maritime Provinces. Arising from these economic disabilities come proposals to limit transportation charges on both outbound and inbound goods and to fix maximum rates on rail transport motivated traffic.

Economic disabilities such as referred to can limit the development of a region and it is understandable why transportation charges may be looked upon as being a burden, when the burden in pith and substance is the economic disabilities themselves. As transportation charges are easily identified, they become the rallying point for complaints and the freight rate structure is suggested as the vehicle to answer them. Where economic disabilities exist, the question which must be answered is whether the freight rate structure is the appropriate means of alleviating these disabilities.

It is the position of Canadian Pacific that economic disabilities of areas, regions or individual industries should be alleviated by national subsidy only if the continuation of the disability will act detrimentally to Canadians as a whole. It is the position of Canadian Pacific that the freight rate structure should not be used as a vehicle for implementing economic assistance unless there is no other practical alternative. This is because, except in the rare case of a single commodity without competitive shippers in other areas, subsidy through the freight rate structure cannot be made selective and the use of it can cause economic distortions.

The Board of Transport Commissioners cannot be an arbiter of industrial policy. It is not and cannot rightfully

be concerned with equalizing costs of production and has no right whatsoever to attempt to equalize geographic, climatic and economic conditions. The Railway Act requires that insofar as is reasonably possible, rates shall be equal in all sections of the country. Where it is not reasonably possible to make freight rates equal, to direct by statute, by legislative fiat or by any other type of direction, that normal rate making principles should not apply is merely a roundabout way of making the Board an economic planning board and the freight rate structure an instrument to equalize economic and geographic conditions.

As Mr. J. M. Roberts put it:

"It must be recognized that freight rates, to be just and reasonable, should not be used to offset geographic advantages or disadvantages of any given producer or area. Nothing is clearer than that the jurisdiction of the Board of Transport Commissioners is not that of an economic planning board. Obviously, if it was to be an economic planning board, it would not only have to control transportation costs, but all other costs that are elements in the sale price of goods."
(Vol. 106 - 17610).

Mr. Edsforth's view was:

"Mr. Sinclair: Now, there is a subsidy proposal by Saskatchewan that I will not ask you to deal with specifically but would your remarks on subsidies and your view as to how they should be applied ...

Mr. Edsforth: I think the general position of subsidies is pretty much the same, a subsidy should be given to the person for whose benefit it is and not through some other means.

Mr. Sinclair: And would you make any exceptions to it at all?

Mr. Edsforth: Well, only in the case where there is no practical alternative and where, for economic reasons a level of rates must be maintained, then I think it may have to be done through the freight rates although I still do not think it is a good idea. This, of course, may be the only practical way."
(Vol. 109 - 18184).

Many of the witnesses who appeared before this Commission agreed with this fundamental point. As Colonel J. J. Harold, one of the witnesses for Quebec put it:

"To base everything on nothing but transport charges without enquiring more deeply into the cost of production, the ability of industry in one area to compete with another is not realistic."
(Vol. 126 - 20922).

"Mr. Sinclair: I take it that it is basic to the submission of the Province of Quebec that the rate structure should not be used as a method of providing assistance except in very special circumstances and where there is no other really practical way of providing that assistance?

Colonel Harold: That I would say is a concise statement of our position."
(Vol. 126 - 20879/80)

Mr. George Paul, the witness appearing for Canadian Manufacturers' Association, agreed that if regional assistance is to be given, it should be done by way of direct payment to those that are intended to be subsidized (Vol. 54 - 9857).

Similarly, Dr. Hu Harries, one of the witnesses for Alberta, said:

"If a region is entitled to a subsidy in the opinion of the Government, then of course the Government pays it, but not through the transportation system."
(Vol. 97 - 16590)

Canadian Pacific believes long-established subsidies such as the Maritime Freight Rates Act cannot be withdrawn but they might well be limited in their application. Canadian Pacific would support the view that the existing Maritime freight rates subsidy should not apply to competitive rates and agreed charges. Canadian Pacific has indicated that it is opposed to regional subsidization through the freight rate structure. Canadian Pacific believes that the bridge subsidy creates anomalies and distortions and should be withdrawn. Canadian Pacific agrees with Mr. George Paul that the bridge subsidy "should come out of the freight rate structure altogether" (Vol. 54 - 9906). The use of the freight rate structure for a regional subsidy and the anomalies that can arise when this is done is indicated by the evidence of Mr. George Paul in regard to the bridge subsidy:

"Mr. Mauro: Is there any doubt in your mind as to who is being assisted by the bridge subsidy?

Mr. Paul: Yes, there is. I do not know who is being assisted by the bridge subsidy. I do not know who the money goes to."
(Vol. 54 - 9907)

Canadian Pacific is as perplexed as Mr. Paul as to where the bridge subsidy goes.

It is also to be noted that British Columbia was unable to say where the subsidy went and suggested that it was a subsidy to either Ontario or Eastern Canada. It was suggested by one of the Commissioners that British Columbia would benefit if the bridge subsidy were applied to competitive rates and agreed charges in cases where commodities were sold f.o.b. plant plus freight. Even in such case Dr. Hughes stated that where the demand in British Columbia was inelastic, the Eastern shipper would be able to take the full advantage to himself of the bridge subsidy (Vol. 79 - 13784).

It is significant in our submission that none of the Maritime or Western Provinces introduced evidence to show that when freight rates were reduced following the enactment of: the One and One-Third Rule; the commencement of the bridge subsidy; or the inauguration of the roll back subsidy -- that prices of goods delivered in their provinces fell or the f.o.b. price received for goods shipped from their provinces increased. This, notwithstanding the repeated claims that they pay the freight on everything they buy and everything they sell.

In order to determine whether there is equality of opportunity in various regions of Canada requires an investigation into the price and cost of raw materials, the efficiency of plant, the fertility of the soil, the value of the mine, the skill of labour, wage levels and generally all the conditions affecting production, manufacture, cost and price. Certainly these are not equal in all the regions of Canada.

Canadian Pacific has not made the detailed investigations necessary to determine the effect of economic disabilities by regions which would enable it to say whether certain industries in the Maritimes, for example, need assistance or whether the economy of Saskatchewan, for example, requires a stimulus. It may be that they do and it may be that it would be good for the Canadian economy as a whole for such assistance to be given, but it is submitted this is not a problem relating to railway transportation in Canada.

Specific Freight Rate Matters

Long and Short Haul Discrimination - Alberta:

Alberta recommended that the One and One Third Rule be applied to all types of transcontinental competitive movements whether covered by agreed charges or by competitive commodity rates (Volume 97 - 16476). This recommendation was based on three grounds: equity, the needs of the intermediate territory, and an economic freight rate structure.

As the Commission is aware, the One and One Third Rule is covered by Section 337 of the Railway Act and is a result of a recommendation made by the Turgeon Royal Commission in 1951. Stated simply, this section of the Act provides that rates to or from "intermediate territory" as described in the Section, shall not exceed by more than one-third the competitive rates applied on transcontinental freight traffic moving between Eastern Canada and the Pacific Coast. While Section 337 applies to both eastbound and westbound traffic, its principal effect is on traffic moving westbound to Alberta and interior British Columbia, although Alberta is its only supporter. Thus, in effect, a maximum is imposed on traffic moving to or from the intermediate territory just described, related to the competitive rates on traffic moving to or from British Columbia.

This section has no effect on traffic moving at agreed charges and this is the real substance of Alberta's complaint. What Alberta is seeking to obtain from this Commission is what was denied by the Turgeon Royal Commission on Agreed Charges in 1955. This was admitted by Dr. Harries:

"The Chairman: In effect, you are asking this Commission to reverse the second Turgeon Commission?

Dr. Harries: Yes; if I may say so, this is the rougher hand. The 1951 Commission gave the One and One Third Rule; the Turgeon Commission took it away, for all practical purposes.

The Chairman: And you want it restored?

Dr. Harries: We are asking it be restored to all competitive movements".
(Volume 97 - 16476)

The Railway Act, (Sec. 317(5)), provides that the Board shall not approve or allow any toll that for the like description of goods is greater for a shorter than for a longer distance unless the Board is satisfied that owing to competition it is expedient to allow such toll. This means that the rate to an intermediate point may not exceed the rate to a more distant point moving under similar conditions unless the rate to the more distant point is made to meet competition, in which case the Board may allow a higher rate to the intermediate point. Prior to 1951, this rule of rate making applied between all points in Canada but by amendment in 1951 adding Section 337 to the Railway Act, the extent to which the rates to intermediate points could exceed the competitive rate to and from the Pacific coast was made subject to a maximum.

Section 317 (5) of the Railway Act recognizes that competitive conditions may, from time to time, require rates lower than normal from and to certain points and that the railways should be permitted to meet competition without reducing the rates to intermediate points where the same competitive conditions do not exist. This is one of the economic principles common to all businesses and recognized in the making of freight rates. But for the provisions of Section 317(5), the railways would be faced with two alternatives, either to forego meeting the competition and thereby lose the traffic and the revenue contribution from it, or unnecessarily reducing their revenue on a substantial volume of other traffic, either of which results would be detrimental to the interests of shippers.

Dr. Harries, the witness for Alberta on this question, attempted to support what he said were four qualifications to the argument that the meeting of competition is a benefit to all shippers including shippers at the intermediate points (Vol. 97 - 16460 to 16465). It is submitted that in cross-examination of Dr. Harries, each of these "qualifications" was shown to be unsound (as to the first, see Volume 98 - 16649-50; as to the second, see Volume 98 - 16651/2; as to the third, see Volume 98 - 16653; and as to the fourth, see Volume 98 - 16666/7).

When Parliament enacted the One-And-A-Third Rule (Sec. 337 of the Act), the railways pointed out the danger to their revenue position and indicated they would have to examine the situation carefully to see how best they could protect their own interests and those of the shippers of all other freight. The evidence is (Vol. 109 - 18134) that following the enactment of Section 337 the loss in net revenue to the intermediate territory was so severe that the railways could no longer afford to continue a large number of competitive rates to and from the British Columbia Coast, which were cancelled or substantially increased. The effect of this was that much traffic to and from British Columbia Coast points was lost by the railways to other forms of transportation, and in some cases, Canadian producers lost their markets in British Columbia to foreign producers.

While inevitably this meant a reduction in the net revenue obtained by the railways on traffic to and from British Columbia Coast points, the reduction was substantially less than they were suffering to the intermediate territory. It was only when a ruling was obtained that the One-And-A-Third Rule did not apply to traffic moving at agreed charges that the railways were again able to make rates to and from British Columbia Coast points, which recovered most of the traffic they had lost to other forms of transportation and Canadian producers were again assisted in meeting competition from foreign sources. Mr. Edsforth, in his evidence (Vol. 109 - 18134/5) outlined this situation.

The Province of Alberta which for many years had complained of the non-application of the transcontinental competitive rates to intermediate territory, challenged the ruling of the Board of Transport Commissioners that the One-And-A-Third Rule did not apply to the traffic moving under agreed charges, and in order to fully investigate this, a Royal Commission was appointed, with the Honourable Mr. Justice Turgeon as Commissioner, to enquire into the matter. The finding of this Royal Commission confirmed and fully supported the Board in their ruling and further recommended against any change in the Transport Act which would make a similar rule applicable to agreed charges. The reasons given by the Honourable Mr. Justice Turgeon is

his findings are contained in the report of the Royal Commission on Agreed Charges, dated February 21st, 1955, at pages 45 and 46. In the submission of Canadian Pacific, these reasons are as valid today as when they were given.

Dr. Harries in discussing the reasons of the Royal Commission on Agreed Charges (Vol. 97 - 16470 et seq.) overlooked a fundamental point by assuming that there would be direct and substantial benefit to the intermediate territory if the One-And-A-Third Rule were made applicable to agreed charges. The evidence as to what occurred when this rule was made applicable to competitive rates clearly indicates that such an assumption is entirely unfounded. There is no reason to believe that the railways would take any different action with respect to agreed charges than they did in connection with the competitive rates. They would have to protect their net revenue as best they could and on the basis of previous experience, this could only mean the termination of many agreed charges on traffic applying from and to Pacific Coast points with the consequent loss of the traffic involved. To what extent this would benefit the Province of Alberta or any of the intermediate territory, it is difficult to see. Canadian Pacific submits that no one would benefit but many shippers in Canada as well as the railways would be detrimentally affected.

Dr. Hughes, a witness for British Columbia, described the One-And-A-Third Rule as "an artificiality in the rate structure" (Vol. 78 - 13727). Canadian Pacific submits this is an apt and accurate description.

The evidence of British Columbia is:

"Mr. Frawley: All right, that is the next question I am going to ask you. You say that notwithstanding the fact that now, due to a Judgment of the Board of Transport Commissioners with respect to the conflict between Section 32 of the Transport Act and Section 337 of the Railway Act, that notwithstanding the fact that due to that conflict the One-And-A-Third Rule does not now apply to agreed charges, are you telling the Commission that now the fact that the One-And-A-Third Rule still does apply to a transcontinental competitive rate, that that is a serious matter to the Province of British Columbia and industry in the Province of British Columbia?"

"Dr. Hughes: It does not matter whether it harms us or benefits us. It is an artificiality in the rate structure. It is one of those things in the rate structure that we are trying to get straightened up. You have been talking about this for a long time yourself, Mr. Frawley -- get the rate structure put on some reasonable basis. It is a distortion, I think, in the rate structure, whether it is right or wrong.

"Mr. Frawley: Mr. Hughes, are you here just advocating a tidying up of the freight rate structure?

"Dr. Hughes: No, I am not.

"Mr. Frawley: Or are you here presenting the grievances of the Province of British Columbia with reference to the Canadian freight rate structure?

"Dr. Hughes: I am saying in the brief that the Province of British Columbia has suffered needlessly from the One-And-A-Third Rule.

"Mr. Frawley: Has suffered, you say?

"Dr. Hughes: Yes, needlessly."

(Vol. 78 - 13727/8).

Mr. Stechishin, one of Manitoba's witnesses agreed it was almost inherent from their submissions that the time had come for the abolition of the One-And-A-Third Rule (Vol. 96 - 16390).

The evidence of Quebec is:

"We object to the proposals made that the One-And-A-Third Rule be applied 'to all types of transcontinental competitive movements whether by agreed charges or commodity rates'."

(Vol. 125 - 20717).

Canadian Pacific submits that Alberta's proposal should be rejected and that the repeal of Section 337 of the Railway Act in its entirety be recommended by the Commission.

Long and Short Haul Discrimination - Manitoba

Mr. Stechishin, appearing for the Province of Manitoba stated:

"It seems clear that once competition becomes a fact, the railways, from the point of view of contribution to net revenue, should meet the competition where it occurs and not reduce their rates to intermediate points. The railways obtain the least contribution to net revenue when they are forced to reduce their rates to intermediate points and in fact, would improve their financial position by abandoning the traffic rather than by making such reductions."

(Vol. 92 - 15700/1).

However, Mr. Stechishin held a different view with respect to traffic moving from intermediate points as he considered that the railways would be financially better off by applying competitive rates from intermediate points. It was Mr. Stechishin's view that rather than a deterioration in net revenue, the railways' revenue would be improved by applying from intermediate points competitive rates published from more distant points, and he submitted several tables of calculations to support this position. It should be noted that Mr. Stechishin's calculations, all assumed that the level of the freight rate alone would dictate the point or points from which the traffic would move, an assumption, of course, which cannot be accepted because it should be recognized that transportation cost is only one of many factors.

It appeared in cross-examination of Mr. Stechishin that he was making the recommendation without consideration of the distinction between internal market competition and external market competition (Vol. 96 - 16298).

The distinction is vital. As the Commission is aware

the railways do not make competitive rates to meet internal market competition, and this point was fully explained by Mr. Edsforth in his evidence (Vol. 109 - 18135 et seq. and Vol. 118 - 19618 et seq.).

On the other hand, railways do make competitive rates to meet external market competition. This is competition in the Canadian market from foreign sources of supply. It is not the desire of the railways to deny any Canadian producer, no matter at what point located, the opportunity of competing in the Canadian market against foreign competition, but an arbitrary rule simply compelling the application of market competitive rates from all intermediate points would not take care of this situation. In dealing with external market competition, the freight rate is, of course, only one of the factors, and such rates are usually made by a process of negotiation with the Canadian supplier, on the basis of both parties making adjustment in the price designed to meet the foreign competition.

Carrier competition, on the other hand, is an entirely different matter because here is involved not the matter of a producer meeting in the Canadian market the competition of a foreign producer, but of the railways meeting the competition of another carrier. The shipper obviously is in a position to take advantage of whichever form of transportation he wishes and by meeting that competition, the railways have in no way improved the position of the shipper. They have only protected their own position. If the same carrier competition does not exist from intermediate points, it would be unsound to apply the competitive rate from the intermediate points to meet the non-existent competition.

Dr. Williams, who appeared as a witness for Manitoba, distinguished between market competition and carrier competition at the distant point. He said:

"We have not, so far as I know, tried to couple a carrier competitive situation with a market competitive situation, and in consequence, would not extend the requirement to places not competitive in the carrier sense".
(Volume 103 - 17226).

The market competition to which Dr. Williams referred is off-shore or foreign competition.

In speaking of carrier competition, Dr. Williams said:

"...a carrier may elect to meet carrier competition or he may elect not to meet it. That is the election of the carrier, but if he does elect to meet it, then he must meet it from all points where it occurs with like force and vigour".
(Volume 103 - 17226).

It should be noted that Dr. Williams recognized that in meeting carrier competition, competitive rates should only be made from intermediate points where carrier competition occurs.

It is the submission of Canadian Pacific that in making competitive rates, the long standing long and short haul rule should apply in all parts of the country and in all situations. To make arbitrary exceptions to this with the objective of endeavouring to allocate certain traffic to certain areas by creating artificial competition, where it does not in fact exist, would be wrong in principle and in practice.

Interline Rates - Manitoba

The Province of Manitoba, in making submissions to the Commission with respect to interline rates, really made three separate recommendations:-

1. Where freight rates are based on mileage, they should be applicable between all stations on the line of one railway and all stations on the line of other railways, that is, a full line of interline freight rates.
2. That in constructing such interline rates, the shortest distance via any common point should be employed whether

or not the traffic moves or could physically move via such point.

3. That between stations located on one railway, if a shorter mileage can be obtained by using a combination of mileages with another railway between the same points, that shorter mileage should be used in making the freight rates, even though applied to the longer single line haul of the railway serving both origin and destination.

With respect to the first recommendation, Mr. Edsforth in his evidence (Volume 109 - 18107) stated that Canadian Pacific has many interline rates in Western Canada and is prepared to establish them wherever they are needed as long as there is or is likely to be a movement of traffic, but that he was opposed to the introduction of a lot of interline rates unless there is actually traffic to be moved.

From Mr. Mauro's cross-examination of Mr. Edsforth, it is apparent Manitoba is not suggesting the publishing of rates between all points on one railway for all classes of rates to all points on all other railways. What Manitoba was suggesting was the publication of a single master mileage tariff covering all points in Canada calculated on Manitoba's basis.

Mr. Edsforth said:

"Well, I would hate to have to lift that tariff because it would be a tremendous thing, just enormous. I know a number of years ago the Canadian National attempted to have one put out just within eastern Canada and they had it on very thin paper and it was well over a foot thick or more, it was a tremendous thing. Now what you are suggesting here, I do not think you can get it into one tariff that would be workable."
(Vol. 118 - 19538)

Mr. Mauro suggested that this had been done in the United States. (Volume 118 - 19538) As far as we can ascertain, no such type of master mileage tariff has been published in the United States. It may be Mr. Mauro had in mind the master tariff publishing the groups arising from the 28360 class rate adjustment. This is an entirely different thing.

The submission of Canadian Pacific is that the railways publish interline rates when there is an actual movement of traffic. In addition, provision is made by Section 341 and 342 of the Railway Act for the publication of a joint tariff for traffic moving over any continuous route in Canada operated by two or more companies. If railways fail to provide such a joint tariff, the Board has full jurisdiction to require the companies to agree upon and file a joint tariff satisfactory to the Board, or the Board may determine the route and fix the tolls and apportion the same. It is the submission of Canadian Pacific that the present practice, coupled with these sections of the Railway Act, provides ample protection to shippers and that the proposal of Manitoba with respect to interline rates should not be recommended.

With respect to the second recommendation of Manitoba on interline rates, Canadian Pacific is opposed to the suggested method of constructing interline rates. What Manitoba proposed is in effect the use of "trick" mileages, that is, rates from a point on one railway to a point on another railway calculated by use of a route over which carload traffic could not move because no physical facilities exist for interchanging it between one railway and another.

Interline rates are now constructed on the distance via the junction point over which the carload traffic can be physically handled without unloading and reloading the car at the junction point, and this, it is submitted, is as far as the railways should be required to go.

Manitoba's third interline rate suggestion (although they considered it as some type of long and short haul discrimination) covers traffic moving between two points on the same line of railway. This suggestion would result in a railway being compelled to carry traffic over its line at a rate calculated on a distance less than actually involved in the movement or to turn its traffic over to another railway at an intermediate junction point for carriage to the final destination. In the latter event, the railway serving both origin and destination would be short hauled as it would be dividing

the haul and the revenue with another carrier.

The consequence of this proposal would be clearly to reduce the railways revenue; it can have no other result. This proposal would not remove any inequities but it would produce some. As Mr. Edsforth pointed out in his evidence (Volume 109 - 18116) under this method of rate making, there could not be any kind of class rate equalization. He gave as an example a movement from Vancouver to Heatburg, which the Canadian National Railways would have to haul 874.4 miles, but under Manitoba's proposal, could only charge a rate based on 768 miles. On the other hand, in another part of the country, from Pine Falls to Edmonton, where no combination of two line mileages would produce a lower charge, the Canadian National Railways would haul the traffic 864.5 miles and the charge would be based on that mileage. This, of course, is only one example; there would be many others.

Between two points served by two competing railways, the line having the longer distance may charge the rate based on the shorter distance of its competitor. This is not mandatory but permissive. In the example used by Manitoba of traffic moving from Vancouver to Calgary (Volume 118 - 19566 to 19573), the Canadian National Railways do not have to apply the same rate as the Canadian Pacific Railway. It chooses to do so to meet its competitor and in doing so does not give shippers a rate lower than would be open to them shipping via the competing line. Manitoba's proposal, however, would not leave this as a matter of choice but would make it mandatory for the single line carrier to charge the shorter mileage even without any competitive necessity for so doing and thereby give a lower rate than the shipper could otherwise receive.

In this proposal, Manitoba is in direct contradiction to the position adopted by it that "the railways should meet competition where it occurs and not reduce the rates to intermediate points". (Volume 92 - 15700).

The Aggregate of Separately Established Rates - Manitoba

Manitoba recommended that a provision similar to that found in Section 4 of the Interstate Commerce Act, should be implemented in

Canada, namely, that railways should not charge any greater compensation as a through rate than the aggregate of separately established intermediate rates (Vol. 93 - 15838).

In his evidence (Vol. 109 - 18125), Mr. Edsforth pointed out that Canadian railways have already provided in their tariffs a rule which goes further than the regulation cited by Manitoba and took the position that there is no need to cover by statute something already done. Mr. Edsforth said that the rule now embodied in the Canadian railways tariffs was a matter of common sense and he doubted that the railways would ever be likely to take it out.

It is Canadian Pacific's submission that there is no necessity for the Commission to take action with respect to this proposal.

Per Car Rates and Incentive Loading - Manitoba

Manitoba proposed that in certain instances, rates be made by assessing a flat charge per car or a sliding scale of rates based on varying minimum weights (Vol. 92 - 15807).

Mr. Edsforth, in his evidence (Vol. 109 - 18120/1) stated he had no quarrel with Manitoba about incentive rates, in fact, he was very much in favour of them (Vol. 118 - 19574). In the matter of per car rates, he said that Canadian Pacific was not opposed to them (Vol. 118 - 19573 et seq.) but emphasized they should not be a "guiding principle or rule" for constructing rates. There were some places where they might very well serve a definite purpose, but in other cases, they would not do so (Vol. 118 - 19576).

It is submitted that no action on the part of the Commission is required.

Proposals of Canadian Trucking Associations Regarding Agreed Charges and Competitive Rates

Canadian Trucking Associations proposed two amendments to the Transport Act. The first would be an amendment to subsection (1) of Section 33 which would give any motor vehicle operator or

an association of motor vehicle operators the same right as a carrier or association of carriers by water or rail of complaining to the Minister that an agreed charge is unjustly discriminatory against a carrier or a motor vehicle operator (Vol. 59 - 10649).

By a second amendment of the Transport Act, the Canadian Trucking Association proposed an additional subsection to Section 32 providing that "no carrier shall make an agreed charge which requires, by its terms, a shipper to ship more than 50% of the goods of the shipper" (Vol. 59 - 10651).

Two amendments to the Railway Act with respect to competitive rates were also proposed, the first adding a definition in Section 2 of the Railway Act of a "motor vehicle operator" and the second an amendment to Section 334 governing the filing of competitive tariffs. These amendments would give a motor vehicle operator the right to apply to the Board of Transport Commissioners, through an association of motor vehicle operators for an order disallowing any competitive rate which the motor vehicle operator alleged subjected him to an undue or unreasonable prejudice or disadvantage. The proposed amendments would further specify that the Board must, at the request of any party to such an application, hear and determine the matter in open court (Vol. 59 - 10660/1).

Dealing first with the proposed amendments to the Transport Act, it is quite clear that the objective is to place limits on the ability of the railways to secure traffic in competition with motor carriers by means of making agreed charges. In considering these proposed amendments, it is necessary to appreciate the reasons why agreed charge legislation is now contained in the Transport Act. The report of the Royal Commission on Agreed Charges, 1955, at p. 21, makes reference to the intention of Parliament in 1938 when the legislation was first enacted. It was clearly intended to give the railways, an industry regulated by Parliament, an opportunity of competing with unregulated motor carriers.

It is well known that in Canada legislative jurisdiction over the trucking industry is divided between the Dominion and the

Provinces. Broadly speaking, the Dominion has jurisdiction with respect to the activities of extra-provincial and international carriers (Attorney-General for Ontario et al v. Winner (1954) A.C. 541). However, the extent to which Dominion jurisdiction would extend to the activities of an international or extra-provincial carrier under this decision would be limited even further by a constitutional amendment proposed by the C.T.A.

Counsel for the Canadian Trucking Associations said:

"During the cross-examination of Mr. John Magee it was stated that the intra-provincial components of an extra-provincial highway carrier would be subject to the proposed Highway Transport Act of Canada -- The decision of the Judicial Committee of the Privy Council in the Winner case allocated these components to Federal jurisdiction. I am instructed to advise the Commission that notwithstanding the law as it stands today, the policy of Canadian Trucking Associations is that the intra-provincial components of extra-provincial undertakings should be under provincial control and that to achieve this end it is a recommendation of the Associations that the necessary statutory amendments to the British North America Act be made to effect this policy."
(Vol. 124 - 20452/3)

It is apparent, therefore, that the entire field of the operations of intra-provincial carriers, together with the intra-provincial operations of extra-provincial carriers would remain wholly within provincial jurisdiction. While, therefore, the trucking industry under these proposed amendments would have the right to complain of agreed charges and competitive rates on rail traffic moving entirely intra-provincially, there would be no comparable right for the railways to complain about rates on traffic moving by motor vehicle entirely intra-provincially. Mr. Magee recognized this difficulty and said:

"Well, in regard to purely intra-provincial regulation, we have expressed the hope, Mr. Sinclair - it may seem a fond hope - that if we can get the Federal regulatory picture revised and improved, then that will set a standard which the provinces will follow."
(Vol. 65 - 11502/3)

The attitude of Alberta on any type of truck regulation and the attitude of Ontario with regard to truck rate regulation makes Mr. Magee's "fond hope" remote.

Even if Mr. Magee's fond hope is realized, there would still remain individual provincial regulation of purely intra-provincial truck traffic. Therefore, while under the proposed amendments the trucking associations could complain to the Board of Transport Commissioners with respect to all competitive rates and agreed charges, there would be no comparable forum to which the railways could complain of similar rates of trucking companies on intra-provincial traffic. In addition, even under the legislation proposed by the Canadian Trucking Associations for extra-provincial and international trucking (Vol. 60 - 10768) the regulatory body proposed would not be a Federal body but a body assembled ad hoc for the particular complaint from members of the motor carrier boards of the particular provinces concerned. Mr. George Montague, another of the witnesses for Canadian Trucking Associations, admitted that there could be some 11,000,000 different groups of persons who could compose the proposed regulatory body (Vol. 65 - 11488). It may be suggested this would scarcely ensure consistency in regulation.

Mr. Magee said that the proposed amendments were "to safeguard the preservation of competition" and "to prevent undue rate practices from developing" (Vol. 65 - 11501). Under the existing provisions of the Railway Act and the Transport Act, competitive rates and agreed charges must be compensatory and competitive rates must not be lower than necessary to meet the competition (Section 334 of the Railway Act and Section 32(4) and Section 33(3) of the Transport Act). This ensures that there cannot be destructive rate making by the railways to the detriment of motor carriers. What the C.T.A. is, in effect, proposing is some additional regulation not in the interest of shippers, but in the interest of motor carriers. The test of a competitive rate is not whether it subjects a motor vehicle operator to an undue or unreasonable prejudice or disadvantage, but whether it is, in fact, compensatory. If it is compensatory and not lower than necessary to meet the competition, then it is not a burden on other rail traffic, and the question of whether it affects the competitive position of a motor carrier is quite irrelevant.

Dr. Hu Harries, one of the witnesses for Alberta, said that he would not allow truckers to appear before the Board on the matter of minimum rates, and he continued:

"... So, I would not be in favour, sir, of having competing carriers making an appearance in those cases where minimum rates were to be decided if in fact it was thought advisable to have minimum rate regulation ..."
(Vol. 99 - 16765)

Dr. Harries was of the view that trucking is not the frail flower he thought it was ten years ago (Vol. 97 - 16594).

It is the submission of Canadian Pacific that the proposals of C.T.A. with respect to permitting individual truckers or trucking associations to appear on competitive rates and agreed charges is not sound in principle, nor would it result in safeguarding the preservation of competition as stated by Mr. Magee. As the Commission is aware, there is no consistent policy followed by the provinces with respect to the fixing or fixing of truck rates, let alone legislation to provide that such rates shall be compensatory. When Mr. Magee was asked to define what he had in mind as an "undue or unreasonable prejudice or disadvantage" he said it would appear to be a case for the railways perhaps going below cost to deliberately put the truckers out of business (Vol. 65 - 11507). As has been indicated, the present legislation prevents railways from establishing competitive rates or agreed charges below variable cost, and there is sufficient regulatory machinery presently available to ensure that they do not do so.

The C.T.A. proposal that under the Transport Act, a carrier could only contract for 50% of the goods of a shipper is in marked contrast to the provisions of Section 15 of the proposed Highway Transport Act recommended by the C.T.A. Section 15 of that Act reads as follows:

"15. No operator of extra-provincial transport shall enter into any agreement with the shipper or receiver, or an agent of shippers or receivers, under which such shipper or receiver is required by the agreement to ship or receive more than 50% of the goods of such shipper or receiver by such operator."
(Vol. 60 - 10775)

Mr. Magee agreed that under his draft Act, one trucker could contract for 50% of the shipper's traffic between two points, and another trucker could contract for the other 50%, so that 100% of a shipper's traffic could, by contract under agreed charges, be committed to highway movement (Vol. 64 - 11400/1). Mr. Magee said that his association was taking a look at this matter (Vol. 65 - 11519). It was suggested that the difficulty might be cured by providing in the proposed Section 15 that no agreement for transportation by highway from or to a competitive point or between competitive points on a route of two or more extra-provincial carriers should be made unless competing carriers by highway consent thereto in writing or join in the making of the contract. However, Mr. Hume, counsel for the C.T.A., pointed out a very practical objection to this suggestion:

"Mr. Hume: Before you leave that, may I say, do I understand it correctly that if you take, say, Toronto and Hamilton it is realized that with all the C carriers and D carriers you could have 2500 carriers involved in competing between Toronto and Hamilton."
(Vol. 65 - 11640)

This demonstrates the impracticability of the proposed legislation.

On the other hand, the proposed amendment to the Transport Act would be detrimental to railways and shippers. Counsel for the C.T.A. agreed that if there were two railways and one shipping line involved, the most that any one of them could secure would be 1/3 of 50%, if they were all parties in carrying the freight:

"Mr. Sinclair: I am asking him, that the steamship company, like C.S.L., can become a party to the agreed charge, and under your proposal the 50 per cent that was to be the limit for the railways would also include the shipping line which became a party to the railway's agreed charge?

Mr. Hume: Yes, the intention, as I read the amendment proposed by this association, is that no carrier under any circumstances should be permitted to tie up by contract more than 50 per cent, and I would think that would include all parties, including the shipping line.

Mr. Sinclair: So, therefore, if there were two railways involved and one shipping line, then the maximum would be one-third of fifty; correct?

"Mr. Hume: That would follow, yes. If they were all parties and carrying the freight, yes, that would follow."
(Vol. 65 - 11519/20)

Once again, the C.T.A. proposal would apply to all traffic moving by railway extra-provincially and intra-provincially, whereas the proposed limitation contained in the C.T.A. draft Highway Transport Act would only apply on extra-provincial traffic. It was pointed out to Mr. Magee that this gave the truckers under the existing law a very large advantage in making agreed charges. Mr. Magee said:

"I think that if this found its way into Federal legislation it would eventually find its way into Provincial legislation. I think if we can get good aspects of Federal legislation that the Provincial Governments eventually will adopt that as a guide."
(Vol. 65 - 11524)

This again is the "fond hope" approach. It is not a very sound basis on which to support such far-reaching proposals.

Finally, there is no provision in the proposed C.T.A. draft Highway Transport Act comparable to that found in Section 32(10) of the Transport Act for the Board fixing a charge for any shipper who considers that his business is or will be unjustly discriminated against by the agreed charge. Mr. Magee said:

"Mr. Sinclair: Did you have an opportunity during the adjournment to consider and consult with your advisers that you are now able to bring to the attention of the commission the provision of your proposed Highway Transport Act that deals with fixed charges to protect the small shipper.

Mr. Magee: It is not there the way it is in the Transport Act but there is the provision that the board may amend, reject, suspend or disallow any tariff that is filed herein. In the example you gave of the shipper who got a contract with certain rates in it and the other, shipper who came along and asked for the rates and could not get them from the trucker, in the first instance if you wanted to ship with that trucker he would have to take the rates of that trucker but when he got the rates he would have the right to go to the Board and ask for the same consideration as the gentleman who had the contract."
(Vol. 65 - 11529)

The provision in the draft act to which Mr. Magee was referring was apparently Section 13 (Vol. 60 - 10774). Section 13 merely gives the Provincial Transport Board of any province or the

joint Board the usual power to "amend, reject, suspend or disallow any tariff as filed herein". It is clear that this section is in no way comparable to Section 32(10) of the Transport Act.

It is the submission of Canadian Pacific that these proposals of C.T.A. should be rejected.

This completes the portion of the summation dealing with inequities in the freight rate structure. It has been stated before the Commission that the burden of uneconomic branch lines and of passenger train services should be removed from the backs of the freight shippers. It is proposed, therefore, to turn to a consideration of these allegations.

IV - OBLIGATIONS AND LIMITATIONS

The second specific directive to the Commission required it to consider and report upon:

"(b) the obligations and limitations imposed upon railways by law for reasons of public policy, and what can and should be done to ensure a more equitable distribution of any burden which may be found to result therefrom;"

As indicated earlier in this summation, the obligation of railways to carry the grain traffic at statutory rates is the principal obligation resulting in an unfair burden. This leaves two broad matters raised before the Commission to be considered under this heading. These are: branch lines and passenger train service.

BRANCH LINES

Early in this submission it was stated that railway transportation has proved to be an inviting playground to various professional groups. Branch lines have for years been particularly inviting to economic planners. Experience has taught Canadian Pacific the dangers into which economic planning can lead in the branch line field. It is unsound to have a presentation of excess mileage on Canadian Pacific developed on the basis of looking at a map; to have suggestions made of excess mileage based on density charts; and com-

parisons with railways serving a different economy. All these things were done by Mr. Saunders in his presentation. The Company requires its research organization to make studies on the ground and to discuss and listen to people who are working in the area and who know it intimately.

Branch lines have to be studied in detail on the ground, individually, and with a knowledge of their part in the overall operation of the railway. As well, the existing and potential economy they are meant to serve must be considered along with alternative transport media costs before one can say what is excess. This fundamental position which was the burden of Mr. Emerson's evidence was agreed to by Dr. Williams.

How easy it is for theory to lead to the conclusion that there is an excess mileage problem on Canadian Pacific. A branch line has entirely different ramifications when viewed from the desk of theory, than what it truly is in practice. How attractive it is for the planner to develop schemes and to apply to them such phrases as "rationalization of the railway plant". The hard necessities, the testing in action, quickly destroy many theoretical plans, particularly when developed by persons unguided by practical knowledge of specific railway operations and the lessons of experience gained through actual responsibility for the successful implementation of the plan.

Mr. Emerson said that Canadian Pacific Railway is comprised of main lines and a complementary network of branch lines (Vol. 109 - 18236). He described branch lines and their functions as follows:

"Branch lines are physically connected to main lines and thus are an integral part of the railway plant. Their function is to generate traffic volume for the railway system as a whole. By virtue of being a gathering line, they are of necessity of low traffic density. The traffic moving over branch lines is not generally through traffic. It is traffic which originates at the stations on the line starting from the first station, with volume increasing progressively to the junction with the main line. These characteristics of branch lines were recognized by Canadian Pacific at the time of their construction. The fundamental approach of Canadian Pacific since its inception

was to build branch lines to the standards required in the light of the existing or potential traffic in the immediate future. Rail laid in branch lines is relay rail and of lighter weight than in main line, ties are spaced further apart, ballast is of lower quality, subgrades are narrower, bridges are designed for lower loading capacity and are frequently of a less permanent type of construction. Because of their different characteristics, the investment in branch lines and the costs of maintaining them are lower than in the case of main line.

It has been the policy of Canadian Pacific to upgrade branch lines and increase their capacity as the volume of traffic warranted. Because of their functions and the low density of traffic moving over them, the unit costs of operation on branch lines are greater than for main line operations."
(Vol. 109 - 18241/2)

Mr. Crump and Mr. Emerson stated that the Canadian Pacific system was planned from the beginning and a cohesive route pattern was developed (Vol. 27 - 3922; Vol. 109 - 18237).

As the matter developed in evidence before the Commission, it appears that the following broad issues were raised:

- It is said that the railway systems of Canada comprise many miles of uneconomic branch lines the continued operation of which casts a "burden" on freight shippers and that this burden should be removed "from the backs of the freight shippers".
- It is said that uneconomic branch lines not required in the national or public interest should be abandoned, and that the loss on uneconomic branch lines required in the national or public interest should be subsidized.

It may be noted that the general tenor of the evidence given on this subject was that the railways should be encouraged to take steps to abandon uneconomic branch lines. There is general recognition by the public that the railways should not be obliged to continue the operation of uneconomic branch lines merely on the ground that the line had been built and therefore should be continued in operation.

The first issue to consider is whether or not there are many miles of uneconomic branch lines on Canadian Pacific and if there is a significant burden on freight shippers.

How does one determine whether a particular line is uneconomic? The test is not: Can the railway system function physically if this particular line is abandoned? The real test is: Is the contribution to the railway of the actual or potential traffic on this particular line of a degree which warrants its continuance? If the first test were adopted, it is conceivable that the answer with regard to individual branch lines would be "yes", but the number of cases could be such as to reduce the railway system to the point where it could no longer function because of the overall loss in traffic volume. Therefore, one is bound to consider the true test, and it is the submission of Canadian Pacific that this is the only valid and realistic way in which the matter can be analysed.

As Mr. Emerson put it:

"Because they are an integral part of the railway plant, branch lines can be considered only in relation to the contribution made to the railway system. In considering the economics of a branch line, one must consider the following factors: the traffic density; future potential of the area; the revenue; the length of the branch line; the cost of operating the branch line; the length of haul; and the profitability of the movement of traffic beyond the branch line."
(Vol. 109 - 18242)

The unit costs of transportation for traffic moving over a branch line would undoubtedly be less if there was greater traffic density on the line. This fact, however, does not indicate the line is uneconomic. A light density line is uneconomic only when the line is unnecessary in the sense that it is mere duplication and the costs of moving traffic to a contiguous line would be less than the cost of operating the line. Again, a line would be uneconomic to the railway apart from any question of social costs where the density of traffic on the line was such as not to meet the variable costs for the movement of the traffic originating and

terminating on the line and, in addition, provide sufficient to cover the minimum maintenance cost per mile of track on the line being studied.

Mr. Emerson in his evidence before the Commission said that rough criteria were adopted in considering the economics of branch lines:

"Based upon a branch line of average length and using average conditions insofar as revenue per ton mile, length of haul, type of traffic and present costs, it is my view that a branch line with less than 25,000 net ton miles per mile of line would justify a detailed economic study unless there are clear overriding factors such as potential traffic."
(Vol. 109 - 18242)

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"Using average total branch line operating costs, it is only where density is less than 25,000 ton miles per mile of road that fewer of the nation's economic resources are required to move traffic by highway than by railway."
(Vol. 109 - 18244)

In cross-examining Mr. Emerson, Mr. Mauro, counsel for Manitoba, referred to the transcript just quoted and asked whether the figures could be filed with the Commission showing "average branch line cost". The Commission was informed that these figures could not be filed, but that they could be given to the Commission on a confidential basis. As the Commission knows, some of its members and the staff of the Commission have had discussions on this question with operating and trucking specialists of Canadian Pacific and members of its research staff. Working papers showing the method for developing average branch line costs and alternative trucking costs have been supplied by the Research Department of Canadian Pacific to the Commission's technical staff.

Mr. Emerson said that on the basis of the 1954 system density analysis, there are some 850 miles of branch lines with average density less than 25,000 net ton miles per mile of line on the Canadian Pacific system (Vol. 109 - 18243). This confirms what Mr. Crump said earlier in the proceedings before the Commission, that he did not think there was very much excess mileage on Canadian

Pacific at the present time (Vol. 26 - 3834). Later, under cross-examination, Mr. Emerson explained that the 850 miles he had referred to consisted of 34 individual segments of track totalling 846 miles (Vol. 113 - 18762). Of this, some 150 miles have been dealt with by the Board since Mr. Emerson gave his evidence and applications involving further substantial portions of the mileage are now before the Board.

Much of the misconception that presently exists with respect to the so-called excess mileage in Canada, stems from the report of the Duff Royal Commission in 1932. Mr. Emerson pointed out in his evidence how the mileage operated by Canadian Pacific today is about the same as that operated in 1933 (Vol. 109 - 18237) but that in the interim the population has increased by about 58%, revenue ton miles on Canadian Pacific by 158%, and the gross national product (in constant dollars) by 255% (Vol. 109 - 18238). These facts, coupled with the expected development of the Western Canadian economy, demonstrate that the present situation on Canadian Pacific cannot now be judged on the basis of the views of the Duff Commission given at the depth of the depression of the 1930's.

Considerable general evidence on branch lines was given by Mr. W. B. Saunders, the witness for the grain handling organizations. Mr. Saunders made fundamental errors: firstly, he was unduly influenced by and misunderstood the report of the Duff Royal Commission; secondly, his approach was to consider the question of branch lines in the light of the railway systems of Canada as a whole; and finally, and possibly his most serious error was to equate light density lines and uneconomic lines.

Mr. Saunders referred to the review of the history of railway construction in Canada, made by the Duff Commission in 1932, in which it had described the results as a "tragedy".

The "tragedy" of excess mileage to which the Duff Royal Commission referred clearly did not arise as a result of

construction of excess mileage on Canadian Pacific; it arose in the view of the Duff Commission through the development of:

" . . . two transcontinental railways being constructed in addition to the already established Canadian Pacific Railway:-

The first, by authorizing the construction of the Grand Trunk Pacific Railway from Winnipeg west to the Pacific coast, which was financially assisted by important guarantees by the federal Government, together with the construction of the National Transcontinental Railway from Winnipeg east to Moncton, via the city of Quebec, as a public enterprise at public cost. At Moncton, the new line would connect with the Intercolonial, through to Halifax, and also give access to the port of Saint John, N.B.

The second, by authorizing the Canadian Northern Railway (which received substantial cash subsidies from the Dominion Government, and guarantee of securities) to continue its line westerly from Edmonton to the Pacific coast, and to extend its line easterly from Port Arthur through the provinces of Ontario and Quebec.

Thus there developed by the authority of the Parliament of Canada, the tragedy of three transcontinental railways (providing, with branches, over four thousand miles of unnecessary lines), when two were all the business of Canada required or could support."

(Duff Commission Report p. 11)

That the Duff Commission did not consider there was excess mileage on Canadian Pacific can be gathered from its view of the way in which Canadian Pacific had developed:

"The Canadian Pacific Company has been developed as a single, unified system. The mileage added has been complementary to existing mileage."

(Duff Commission Report p. 13)

Mr. Saunders said that accepting the figure of some 4,000 miles of unnecessary lines referred to by the Duff Commission, this would mean a minimum of \$300,000,000 put into property not needed for transportation, using an investment of \$74,000 per mile based on the Canadian Pacific experience (Vol. 94 - 16054). Unfortunately, the inference arises from the use of Canadian

Pacific investment per mile of line, that some part of the 4,000 miles of unnecessary lines are contained in the Canadian Pacific system. This is not what the Duff Commission said, and no such inference should be drawn.

Mr. Saunders' attempt to develop his thesis that the Canadian Pacific system did contain substantial excess mileage was drawn from the submission made to the Duff Commission by Sir Edward Beatty that 5,000 miles of line could be eliminated under a unified plan for operations of the Canadian Pacific and Canadian National (Vol. 94 - 16055). Mr. Saunders then linked this figure of 5,000 miles with the earlier figure of 4,000 miles. This you cannot do.

Further, when discussing unit costs on branch lines, Mr. Saunders said:

"Overall, using the C.P.R. cost technique, it is estimated that the full costs per net ton-mile on a light density line are four times as great as on a heavy density line. Thus, any duplicative or other light density lines built for reasons of national policy have an important impact on the cost structure of the Canadian railroads. This may be a critical factor because almost half of the railway mileage in Canada consists of such lines."
(Vol. 94 - 16111)

It is seen that one of Mr. Saunders' basic points in regard to excess mileage was that substantial railway mileage had been built in Canada as "National Policy Lines" (Vol. 94 - 16111). With regard to Canadian Pacific, he said: "a commitment was made as a matter of policy to build railway facilities making British Columbia a more integral part of the Federal system" (Vol. 94 - 16118). The undisputed facts are that the only line built in British Columbia under the commitment made by the Dominion Government with that province was Canadian Pacific's main line. The remaining lines of Canadian Pacific in British Columbia were built or acquired by Canadian Pacific in pursuance of its policy of

developing its railway system, and this includes the line from Lethbridge to Nelson. Apart from the Canadian Pacific main line, none of its lines can be described as "national policy lines". Nobody can realistically contend that the Canadian Pacific main line is in excess of requirements.

Looking at the question of branch lines in the light of the railway systems of Canada as a whole, as Mr. Saunders did, is wrong. The railways in Canada cannot be regarded as a single system. Each individual railway must be considered separately. It may be that the Quebec North Shore requires additional mileage and the Canadian National has too much; but consideration of these issues does not assist in determining whether Canadian Pacific has excess mileage. Again, an individual segment of line must be considered along with the railway of which it is a part.

Mr. Saunders placed great emphasis on light density lines and the comparison of the density on American railroads with density on Canadian railroads. Mr. Saunders filed four maps as Exhibits 156, 157, 158 and 159, showing light and heavy density lines in Eastern and Western Canada. For Canadian Pacific Mr. Saunders treated as a light density line those on which the density was less than 250,000 revenue ton miles per mile of road (Vol. 94 - 16060). Mr. Emerson said that he did not agree that lines ranging up to 250,000 revenue ton miles are a problem (Vol. 114 - 18923).

A light density line cannot be equated with an uneconomic line. It is significant to note for example that in the lines included as light density lines on Canadian Pacific by Mr. Saunders are one from which a spur has been built to serve the potash development at Potasco, Sask., and another from which a spur is being built to serve a new sulphur plant of British American Oil Company Limited near Rimby, Alta.

It is apparent that Mr. Saunders' misunderstanding of the Duff Report; his approach of considering this matter on an overall basis and in the light of Government decisions with respect to railway construction on other systems than Canadian Pacific; and the equating of a light density line with an uneconomic line; have led him to false conclusions certainly as far as the Canadian Pacific system is concerned.

It is clear from the evidence of Mr. Crump and from the evidence of Mr. Emerson that there is a relatively insignificant amount of branch line mileage on the Canadian Pacific that is suspect. Mr. Emerson's evidence referred to earlier was that the lines which could be regarded as suspect totalled only 850 miles and that for these, applications for abandonment have been heard or are in the course of preparation for some 300 miles.

It is apparent, therefore, that no real burden is being cast on freight shippers arising from the operation of uneconomic branch lines by Canadian Pacific.

In suggesting that excess branch line mileage was a major problem, it would appear that Mr. Saunders was unaware of the situation in Canada as to the basis upon which the general level of freight rates is determined.

Canadian Pacific is taken as the "yardstick" company and its financial requirements are used for determining the permissive level of net rail income. Freight rates determined on the basis of Canadian Pacific's financial requirements apply to all federal railways in Canada. If, therefore, there is an uneconomic mileage problem on the Canadian National system but none on the Canadian Pacific, it is apparent that any burden arising from

excess mileage cannot be a burden on freight shippers.

It can be seen therefore the contention that branch lines in Canada constitute a substantial burden on freight shippers is without foundation.

The position of Canadian Pacific as to uneconomic lines must take into account its submission with respect to the establishment of a just and reasonable level of rates on export grain. The evidence is that at the present statutory level of rates on export grain a considerable mileage on Canadian Pacific is uneconomic. The burden of this loss, which is not attributable to uneconomic lines but to the low statutory rate, has already been discussed.

Before the Commission it was urged that much excess railway branch line mileage could be eliminated either through the elimination of a line of one railway and the retention of the line of the other, or through the elimination of all rail lines and the transportation of the traffic by other means of transport.

It is the position of Canadian Pacific that where parallel lines do exist, whether owned by one company or different companies and each line is uneconomic, but withdrawal of one of the two lines would make the remaining line economic, then this policy should be pursued (Volume 109 - 18245). However, Mr. Emerson pointed out that an examination of the lines of Canadian Pacific did not disclose any significant mileage where amalgamation of branch lines was feasible, because of the topography, distance, road conditions or traffic volume (Volume 109 - 18244 - 5).

The elimination of rail lines and the substitution of other means of transport involves considerations of resource allocation. The evidence of Dr. Williams was that the determination of whether a particular line is excess involves the alternative cost of moving the traffic by other media:

"That is to say, if we have a transportation task that manifestly has got to be performed and which has been performed in the past by branch line railroad, then it seems to me that our question running to the idea of whether we ought to effect a substitution clearly depends upon whether that substitution can be effected

at an equivalent or less cost."
(Vol. 102 - 17106)

In expansion of this:

"Mr. Sinclair: And when you are looking at the alternative transportation cost we can agree that you must take in all costs. For instance, time costs of labour, investment costs. It would have to be done on a true analysis basis.

Dr. Williams: Oh, quite, yes.

Mr. Sinclair: And if you are going to deal with private carriage one would have to be careful that it did have all true costs assigned to the transportation media that was being looked at.

Dr. Williams: Right.

Mr. Sinclair: There is no such thing in economics as free time? It is just like a free meal?

Dr. Williams: If there is I have not heard about it."
(Vol. 102 - 17107/8)

With respect to the cost of alternative media of transport, Dr. Williams noted:

"But even in our case, where we have a line of railroad that is handling any volume of traffic of consequence, it is rather rarely the case that you can ascertain that it would be cheaper to supply highway transportation instead, even if you have the highway already there. The railroad may, with the volume of traffic it has, not be operating at any kind of optimum for the installed capacity, but it may still be providing transportation more cheaply than we could generate it on the highway."
(Vol. 102 - 17165)

Mr. Emerson's evidence was that while it was difficult to generalize on truck costs, evidence recently placed before the Board of Transport Commissioners indicated the cost of moving grain a distance of 20 miles by highway at some 8.1¢ per ton mile, or approximately $\frac{1}{4}$ ¢ per bushel a mile with trucks of 54,000 pounds gross vehicle weight, and assuming a 15 ton load. He said the cost would be greater in the case of smaller capacity trucks (Vol. 109 - 18243).

In the Board's judgment of December 9, 1960, granting in part the application of Canadian Pacific to abandon a portion of its Neptune Subdivision, Irwin C., with whom Woodard C. concurred,

discussed the evidence of the cost of trucking grain to which Mr. Emerson had referred, saying:

"Much of the grain will be hauled, as at present, by contract to local truckers. The price now being charged, as shown in evidence, is one-half cent per bushel per mile, with variations according to the length of haul. I accept Mr. Aked's figure as an accurate estimate of a cost under special conditions which are not likely to obtain. Competition might eventually develop a lower rate, but I accept the going rate as the fairest measure."

(Page 20, mimeographed copy of judgment).

In the Board's judgment dated December 12, 1960, granting the application of Canadian Pacific to abandon its Reston-Wolseley subdivision, Griffin A.C.C. referred to the evidence of Canadian Pacific that elevators need not be closed if the line was abandoned, but could be used for storage and handling of grain in conjunction with elevators situated on another line of railway. In connection with this evidence, the cost of trucking grain was developed. Griffin A.C.C. referred to the calculation of cost in the following terms:

"It is proposed, then, that two such semi-trailer trucks could be used which, to move approximately 1,057,000 bushels each year, would require some 1,057 trips. Assuming an elapsed time of $2\frac{1}{2}$ hours per trip, the cost per bushel per mile has been calculated. This is .234¢ per bushel per mile, or something under $\frac{1}{4}$ ¢ per bushel per mile.

"This figure has not been broken down on cross-examination, nor any more reliable figures submitted."
(Page 51, mimeographed copy of Board's judgment.)

In the Board's judgment dated December 2, 1960, refusing the application of Canadian National to abandon a portion of its Rapid City subdivision, Griffin A.C.C. referred to the application of Canadian Pacific to abandon the operation of its Reston subdivision, and then said:

"I do not propose to adopt any of that evidence in this matter except that I feel justified in using from that evidence an estimate of $\frac{1}{4}$ ¢ per bushel per mile as being the cost of large scale movement of grain from an off-line elevator to an elevator on an adjacent line."

(Page 37 of mimeographed copy of Board's judgment).

Mr. Emerson also referred to the Royal Commission on the Railway to Great Slave Lake in which the Chairman, Mr. Justice Manning, had stated that grain is trucked from Manning to Grimshaw at a cost to the farmer of 15¢ per bushel for a distance of 60 miles, which gave a cost of 8.35¢ per revenue ton mile (Vol. 109 - 18244). Mr. Justice Manning had also stated that the cost of trucking grain from Fort Vermilion to Grimshaw, a distance of 250 miles, is 50¢ per bushel, which amounts to 6.7¢ per ton mile (Vol. 109 - 18244).

Mr. Emerson said that he would not agree with the suggestion put to him by Mr. Frawley of a rate of 3¢ per ton mile by truck on general traffic replacing branch lines on the Prairies (Vol. 114 - 18894).

In his cross-examination of Mr. Emerson, Mr. Frawley had suggested that Mr. Emerson's figure of some 8¢ per ton mile was quite unreasonable in the light of the fact that under Agreed Charge 761 fuel oil from refineries at East Edmonton to Grimshaw would be returning 2.97¢ per ton mile for 342.1 miles (Vol. 114 - 18903). Mr. Emerson pointed out that under the agreed charge, the revenue per ton mile for the minimum weight, namely 10,000 gallons, or 80,000 pounds for the haul from East Edmonton to Wetaskiwin, a distance of 42.1 miles, would be 4.5¢ per ton mile (Vol. 115 - 19006). Mr. Emerson was of the view that this rate would not only reflect truck costs because in his view the cost of trucking oil for 30 or 40 miles, with a truck capable of carrying 3,000 gallons, would be up in the order of 7¢ or 8¢ per ton mile (Vol. 115 - 19008).

Mr. Emerson also pointed out that his figure of some 8¢ per ton mile for truck costs is for a short haul over relatively poor roads. He did not envisage in most places that if a branch line were taken up, there would be a high class highway reaching rail heads and it would be largely a one-way haul (Vol. 114 - 18916).

It is impossible to test the costs of alternative means of transport by using different minimum weights and different types of hauls than would actually exist in Western Canada, if branch lines were to be taken up and the grain were to be trucked. Mr. Emerson's figure of some 8¢ per ton mile for hauling grain a distance of 20 miles was, as he described it, a rough guide. This compares with rail costs of 2.33¢ per ton mile on the average branch line of 50 miles in length (Exhibit 183).

It is well-known that truck costs for long hauls with heavy loads on good roads will be less than 8¢ per ton mile. However, the truck cost that is being sought here is the cost of trucks operating over Western Canadian roads short distances with a one-way haul as compared with the comparable rail costs on the branch line. In such circumstances, average truck costs are bound to be higher than they would be for long-distance, heavy-loaded trucks operating on hard-surfaced, inter-city highways.

It has been suggested to the Commission that the question of branch lines should be approached on an area planning basis. Mr. Emerson indicated his disagreement with this approach, saying that he did not think abandonments are the type of question which require long range planning or consultation, but are a matter to be dealt with on an individual basis. He said he was not in favour of area planning, as he did not think that abandonments were a major problem, nor involved any major investment (Vol. 115 - 18985).

The proposal that the matter be approached on an area planning basis is one which has some superficial merit. The question, however, is not nearly as simple as it appears at first glance. In the first place, the question must be considered in the light of the situation of the particular railway system that is involved. Secondly, it is impossible to reach conclusions as to what is excess mileage merely by looking at a map. Features other than proximity are crucial. Dr. Williams agreed:

"Mr. Sinclair: Dr. Williams, you would agree with me that before a person can say there is duplication of rail transport, you have to know a great deal about the traffic moving; the topography; the established patterns ----

Dr. Williams: Quite so.

Mr. Sinclair: ---- the linkage that the railway serves, and that you cannot usefully get that kind of an appraisal by merely looking at a map?

Dr. Williams: Oh, I would fully agree with that.

Mr. Sinclair: And I think, Dr. Williams, we can agree on this, that the true test of whether a branch line is redundant is the alternative common carrier cost of moving the traffic that may be moving over the branch lines?

.... But, in view of Commissioner Mann's statement, let me take it in the general now and ask you whether you would agree that the test is alternative transportation costs?

Dr. Williams: If one is looking at the question of the public interest, I would say yes, that is true."
(Vol. 102 - 17105)

What now takes place on applications for abandonment to the Board of Transport Commissioners is an analysis on an individual line basis. It is in fact a detailed study by the Board and its experts with the assistance of the railway involved and the interested parties. It is probably not appreciated the degree of co-operative work now done in abandonment cases by the railway involved, the Board, the municipalities and individuals concerned. Mr. Emerson mentioned this procedure in his evidence (Vol. 109 - 18246/7). Thus, each individual case is given full consideration, which, in the submission of Canadian Pacific, is the only practical approach. Long range overall planning is not appropriate in dealing with the question of excess branch line mileage but studies of individual cases must consider potential traffic and not be based solely on short term economies.

In the proceedings before the Commission, certain parties have stated that there are or will be cases where continuance of the branch line is required in the public interest, or in the national interest. Various attempts were made to define these terms. Mr. Stechishin, the witness for Manitoba, said that national policy and public interest are synonymous (Vol. 93 - 15893). Mr.

Stechishin referred to Premier Roblin's definition of national economic policy (Vol. 29 - 4201) as being a plan or policy or preferably, a series of plans or policies the object of which is to secure the development of Canada for all Canadians. Public interest can certainly not be greater than national interest and, therefore, by Manitoba's definition, national interest or public interest would be the development of Canada for all Canadians.

Mr. Crump was of the same view. He said that by national interest he meant for the interest and betterment of all Canadians (Vol. 28 - 4131).

Dr. Hughes, the witness for British Columbia, said that public interest is not the interest of a small village, but the interest of Canada (Vol. 76 - 13476).

Dr. Williams, one of the witnesses for Manitoba/Alberta, agreed that national interest is a benefit to Canada as a whole (Vol. 102 - 17081).

Mr. Emerson contrasted public interest with national interest. He said that public interest had to do with the interest of a segment of the population as opposed to a matter concerning all the people of Canada (Vol. 115 - 18995).

Dr. Harries thought of public interest as being a matter which could be determined by reference to the particular people involved, whether on the municipal level, provincial level, or federal level (Vol. 97 - 16581/83).

It is the submission of Canadian Pacific that national interest is something for the interest and betterment of all Canadians. Public interest is the interest of the particular segment of the public concerned, which is not necessarily synonymous with national interest.

As applied to abandonment of branch lines, it is quite apparent that the national interest would rarely, if ever,

be involved. Public interest would, in practically every case, be involved. The only possible exception would be in the case of a branch line serving a single industry which had closed down.

In the recent decision of the Board of Transport Commissioners dated December 2, 1960, on the application of Canadian National Railways for an order authorizing abandonment of a portion of its Rapid City subdivision, Griffin A.C.C. reviewed the jurisprudence of the Board leading to the test which is consistently applied in such cases as to:

"whether the loss and inconvenience to the public consequent upon the abandonment outweigh the burden that continued operation of the railway line involved would impose upon the railway company."

His conclusions were as follows:

"That is my view, or to put it otherwise:

"(1) That, if the railway is not patronized by the residents (other than farmers) and merchants (other than the owners of grain elevators), I should not require it to remain in order to maintain the value of their private property or businesses nor, for that matter, should I require it to remain in order to maintain the present status of the villages and hamlets on the line.

"(2) That I should consider the transportation needs of the communities and should weigh the loss and inconvenience to the users of the railway service, in the event of abandonment, against the burden that continued operation would impose upon the Railway Company, or (to the extent that it is passed on) upon users of the railway's services generally.

"The possible losses and inconveniences set out above are in many instances real but they are not, in my opinion, elements to be weighed.

"I consider the grain farmers and elevator owners to be the only present substantial patrons of the railway services. No evidence has been given as to any other class of persons who might in the reasonably foreseeable future become substantial patrons of the services.

"This, in my opinion, is consistent with the principle adopted by the Board, although the word 'public' has in many instances been interpreted as including a larger group of interests."
(pp. 25/26, mimeographed copy of Judgment)

The conclusion reached by Griffin A.C.C. was that the word "public" in an abandonment case referred only to the users

of the railway service. While it is true that Woodard C. and Irwin C. said that in arriving at a conclusion in the case, they had felt it necessary to consider "all matters of convenience and necessity that might affect the general public in the case of abandonment rather than only those affecting the users or potential users of the branch line", it is clear that even their consideration would not extend beyond the general public in the immediate area of the branch line.

In the Board's subsequent judgment dated December 12, 1960, granting Canadian Pacific's application to abandon its Reston-Wolseley line, the position of Woodard and Irwin CC. was clarified. They said:

"We concur in the result of this Judgment. However, before reaching this conclusion, we have considered all the elements of loss and inconvenience to the general public in the area, giving such weight to each as circumstances seemed to warrant. We are of the opinion that only by doing so can we fully measure the indirect effects of abandonment of the line upon users or potential users of the railway."
(p. 56 of mimeographed copy of Judgment).

Certainly, there was no suggestion in the most recent decisions of the Board that there was any element of national interest involved.

Manitoba suggested to the Commission that a branch line trackage maintenance fund be set up (Vol. 92 - 15758). Mr. Emerson dealt with this in his evidence as follows:

"Canadian Pacific is opposed to any suggestion of a branch line maintenance fund. It is my understanding that this proposal as advanced by the Province of Manitoba would entail payments from the national treasury to the railways in respect of branch lines that would otherwise be abandoned. To apply national funds in the perpetuation of an uneconomic branch line is clearly a misuse of such funds. By the time traffic on such a branch line has dwindled to the point that the branch line is no longer economic at just and reasonable rates, this is clear evidence that the branch line is no longer required and any artificial extension of its life is not sound from a national viewpoint. If it is to be maintained notwithstanding its uneconomic state, it can only be for a local convenience.

"In the Manitoba submission it seems to be suggested that a fund for branch line maintenance would be created and that payments from this fund, although made in the first instance to the railways, would be required to be applied to reduce rates on class and non-competitive commodity traffic. Obviously, if there was a burden on the railway itself from an uneconomic branch line, this would not meet the problem. On the other hand, if it is assumed that the burden of an uneconomic branch line has been shifted to shippers, then a reduction in all class and non-competitive commodity rates would not benefit the specific shippers on

"the line and creation of the fund would only involve additional taxes on shippers not using the line. This suggestion can only arise from the mistaken belief that uneconomic branch lines exist in such large numbers that the burden of them is spread across class and non-competitive commodity shippers of the nation as a whole.

"In essence, therefore, the Manitoba proposal is nothing more than a subsidy to particular shippers and has no relationship to branch lines."
(Vol. 109 - 18247-8)

It has been suggested before this Commission that there should be substantial notice to people on the line before an application for abandonment was made. This has been dealt with in the Board's recent abandonment decisions.

In the Canadian National Railways' Wakopa Subdivision case, Woodard C., with whom Irwin C. concurred, said:

"While it is not required by the Railway Act, I cannot agree that any longer notice of application for abandonment would serve any useful purpose. No assurance has been given that a serving of five years' notice would result in preparations being made for that day, and the inequity of requiring the Railway to postpone abandonment of a line which is operating at a loss for that period is most apparent to me".
(p. 22, mimeographed copy of Board's Judgment dated December 5, 1960.)

In the Canadian Pacific's Neptune Subdivision case, Irwin C., with whom Woodard C. concurred, said:

"Prolonged notice would certainly cause a period of disruption to both Grain Trade and farmers in the area, disruption that would be needless in the event of denial of the application."
(p.25, mimeographed copy of Board's Judgment dated December 9, 1960.)

Prior to 1933 when what is now Section 168 of the Railway Act was first enacted, there was no legislative prescription on abandonment of lines. Section 168 reads as follows:

"The company may abandon the operation of any line of railway with the approval of the Board, and no company shall abandon the operation of any line of railway without such approval."

A comparable section is contained in Section 2(3) of the Canadian National - Canadian Pacific Act.

These sections therefore impose a limitation on railway companies in that the approval of the Board must be secured before a line can be abandoned. The principal application of Section 168

is obviously with reference to the abandonment of branch lines. The position of Canadian Pacific is that Section 168 should be revised to permit a more realistic approach to the abandonment of railway lines. Section 2(3) of the Canadian National - Canadian Pacific Act is not necessary and should be repealed.

Canadian Pacific proposed two sections in lieu of the existing Section 168 of the Railway Act. These are set forth in Vol. 109 - 18249/50 and in the Appendix of Proposed Legislation attached hereto. The reason for the proposed Section 168A is merely to give the Board jurisdiction to approve the abandonment of a branch line in the unusual circumstances where it would be apparent that no users would be involved. This situation arises from time to time where, for example, a branch line has been built to serve a mine and that mine has closed.

The principal proposal of Canadian Pacific is to be found in its proposed new Section 168. In effect, this section would give the Board authority to approve the abandonment of a branch line if the railway company established that during a period of three consecutive calendar years, the cost of the movement of the traffic originating and terminating on the line had exceeded the revenue attributable to that traffic. Provision is made for the Board to adjudicate the matter if an application for stay of abandonment is made by any person who has used the line during the period of one year before notice of intention to abandon is given by the railway. If an application for a stay of abandonment is given, and is not withdrawn, the matter is set down for hearing and the Board may grant the stay if it is satisfied either that the cost of operation during the period of three consecutive years has not exceeded the revenues attributable to the traffic, or that sources of revenue for a reasonable period in the immediate future, sufficient to guarantee the excess of costs over revenues, have been guaranteed. If the Board is not so satisfied, it is to dismiss the application for a stay.

It will be noted that in the Canadian Pacific proposed legislation, the right to apply for a stay of abandonment is limited to users of the line.

It is the submission of Canadian Pacific that its proposed legislation amply protects the particular segment of the public that would be affected by any abandonment; that national interest would rarely, if ever, be involved in an abandonment case; that there is general agreement that the railways should be as free as possible to proceed expeditiously with abandonment cases where the circumstances warrant; that lengthy notice of abandonment is not desirable; and that, therefore, its proposed legislation should be recommended by the Commission.

PASSENGER TRAIN SERVICE

Canadian Pacific was built primarily as a means of moving heavy tonnage over long distances and today has no passenger train service on over 50% of its system. Until the 1930's and again during World War II, passenger service more than met its variable cost and contributed to the cost of transportation that would otherwise have been borne by freight.

In speaking of the change in the rail passenger situation after World War II, Mr. Emerson said:

"The impact of competition made passenger traffic a specific problem for the first time and necessitated a revision in the approach of the company to the provision of this service."
(Vol. 109 - 18252)

Mr. Emerson described in detail the approach of the Company in two periods, namely 1948-1953 and subsequent to 1953. The reduction in passenger train service has been most marked in the last five years and the tempo has increased as more and more people indicated their preference for private automobile and air travel. New types of equipment, new pricing policies and concentration on runs that are or hold promise of being profitable, sums up the approach of Canadian Pacific to the passenger train

question. Mr. Emerson expected the passenger deficit of Canadian Pacific would be eliminated in five to ten years (Vol. 110 - 18286/7). What has been and is being done by Canadian Pacific in the passenger train field indicates that it is a problem within the control of management given a reasonable climate of public opinion to make the required adjustments.

The issues raised before the Commission in regard to passenger train service may be summarized as follows:

- It is said that the passenger train deficit should not be a burden on freight shippers, but that uneconomic passenger train services held to be in the public interest by the Board of Transport Commissioners should be subsidized by the Federal treasury.
- It is said that the deficit from commuter operations should not be borne by the freight shippers.

Mr. Emerson gave a full review of the reduction in passenger train services on Canadian Pacific in the last decade (Vol. 109 - 18253/18262). The significant facts are that in the period 1954 to 1959, annual passenger train miles have been reduced by some 29% (Vol. 109 - 18259); the passenger car fleet has been reduced 27% in the period 1957 - 1959 (Vol. 109 - 18262); and the operating deficit of passenger train services for 1959 was some \$14,000,000 less than it would have been had not the program of reduction of passenger train services been implemented during the period 1954 to 1959 (Vol. 109 - 18260). This figure takes into account loss of revenue as well as reductions in operating expenses arising from reductions in passenger train service.

The reduction in passenger train miles on Canadian Pacific since 1953 is illustrated by the following table:

<u>Year</u>	<u>Passenger Train Miles</u>	<u>Percentage Decrease from 1953</u>
1953	20,640,801	
1954	20,277,178	1.8
1955	19,891,626	3.6
1956	18,344,209	11.1
1957	16,764,048	18.8
1958	16,235,447	21.3
1959	14,649,095	29.0
1960	12,127,086	41.2

Source: Annual Reports to Shareholders

On the passenger train question, there was broad agreement among those appearing before the Commission that the railways should be encouraged to discontinue unprofitable passenger train services. However, it was suggested some passenger trains might be required "in the national interest", although no specific runs were delineated.

Mr. Crump said he did not know of any passenger trains being operated in the national interest on Canadian Pacific (Vol. 28 - 4130/1). Mr. Emerson said that he could not think of any instance where Canadian Pacific passenger service would be deemed to be necessary in the national interest (Vol. 113 - 18758). He indicated the extent to which transcontinental passenger patronage had dropped by saying that a test in March 1960 showed that the passenger carryings from the east indicated an average of 22 passengers per day to Calgary and Vancouver (Vol. 114 - 18853 et seq.).

Dr. Hu Harries, on behalf of Alberta, said he could see no requirement why the railways should run transcontinental trains for the convenience of a few people who are not prepared to pay what the service is worth (Vol. 97 - 16580).

Mr. Crump said that he doubted whether the present downward trend in passenger traffic could be arrested by the different efforts made by the railways to attract more passengers (Vol. 27 - 3882). It was Mr. Emerson's view that this did not mean that passenger train service would disappear (Vol. 109 - 18261). Mr. Emerson said that future passenger train service would involve a number of intercity runs consisting of predominantly a coach operation provided in part by rail diesel cars, of which Canadian Pacific has the second largest fleet on the continent. He also said it might be possible to re-schedule the transcontinental trains to serve other major cities which will need intercity service (Vol. 109 - 18265).

Mr. Brownlee, for United Grain Growers, said that it was inherent in the nature of a railway that it should provide passenger service, and in most places continue to do so in spite of shrinkage in volume of business, even when the service became a source of expense, rather than a source of revenue (Vol. 81 - 14151). This is contrary to proper railway practice, but is also contrary to the obligation of railways under the Railway Act.

The passenger train service burden on Canadian Pacific in 1958 was \$15,556,811. The results of the Canadian Pacific study, as given by Mr. Emerson, are as follows:

Revenues, including the value of free transportation		\$70,454,260
Expenses -		
Operating expenses (including depreciation on all equip- ment and full cost of solely related lines)	\$91,404,929	
Cost of money (on investment to be perpetuated at 10.4%)	<u>8,401,805</u>	<u>99,806,734</u>
		\$29,352,474
Less income tax (at 47%)		<u>13,795,663</u>
Passenger train service burden in 1958		<u><u>\$15,556,811</u></u>

(Vol. 109 - 18264)

The costing principles applied in the Grain Study were used in the costing of passenger train service, except where the

nature of the service made them inappropriate. No part of constant cost was ascribed to passenger train service. This is because the carriage of passenger traffic is a by-product of the railway system. Mr. Emerson pointed out that the fundamental purpose of the railway system was to carry freight (Vol. 109 - 18251/2). The fact that it is unrealistic to charge any part of constant cost to passenger service on Canadian Pacific was covered at pages 43-44 of this summation, when the positions of Manitoba/Alberta and the grain handling organizations were discussed.

Dr. Williams, appearing for Manitoba/Alberta, agreed that passenger train service should be costed on economic incremental cost, except that since the question is whether the service ought to be abandoned, you are looking at the downward study rather than the upward study (Vol. 102 - 17099). On re-examination Mr. Mauro attempted to have Dr. Williams take a different view (Vol. 103 - 17210/13). It is to be noted that Dr. Williams in answering Mr. Mauro, immediately moved to freight service, that is a service for which the plant is basically constructed, and did not modify his earlier answer with regard to the by-product passenger service on Canadian Pacific.

In the passenger train service study, cost of money was taken on the variable investment in road property and on the investment in equipment which it was estimated would be perpetuated, namely, \$40,000,000 (Vol. 109 - 18265). Depreciation on total investment in property used in passenger train service was included (Vol. 109 - 18264).

The revenues and expenses of commuter service were excluded, as this service must be considered as a separate service entirely distinct from general passenger train services (Vol. 109 - 18263; 18273).

Mr. W. B. Saunders, the witness for the Grain Handling Organizations, made an estimate of the Canadian Pacific passenger service costs for 1958.

The principal differences between the Canadian Pacific figure for passenger burden and the deficit figure advanced by Mr. Saunders are as follows:

- Mr. Saunders did not include the value of free transportation in revenues;
- Mr. Saunders computed cost of money on the full investment in passenger train equipment;
- Mr. Saunders included a portion of constant cost;
- Mr. Saunders made no adjustment for income tax.

It is apparent, therefore, that the differences between the two results turn on differences in the concept of computing the passenger train service burden rather than in the details of the figures themselves, except in a few instances.

Mr. Emerson explained that a special study by Canadian Pacific in the twelve-month period March 1959 to February 1960, showed that free transportation had been given to an estimated total value of \$6.7 million (Vol. 109 - 18271). Mr. Emerson said that it was necessary to credit passenger revenue with the value of free transportation if you want to look realistically at the burden that was developed by passenger train service (Vol. 113 - 18761).

Cost of money should be restricted to the value of equipment which will be perpetuated as it is the only equipment for which capital will continue to be required.

Mr. Saunders suggests that in the Canadian Pacific figure depreciation was not charged (Vol. 117 - 19435). This is not so, as full depreciation was charged. Apparently Mr. Saunders was thinking of certain Canadian National figures.

The reasons why Mr. Saunders was in error in charging a portion of constant cost to passenger have been referred to earlier.

In connection with the deduction of income tax, it must be remembered that the complaint being advanced is that the operation of passenger trains at a loss casts a burden on freight shippers. As has already been noted, the general level of freight rates in Canada is fixed with reference to the net rail income of Canadian Pacific, that is, its position after income tax.

The fact that passenger train services result in an operating deficit means that the income tax otherwise chargeable in respect of railway operations is reduced. The amount of the reduction in income tax must therefore be credited against the passenger train operating deficit in order to arrive at the burden of passenger train services. It may be noted that if Mr. Saunders' estimate before constant cost is reduced by income tax, the result is \$22,631,000 without giving any credit for free transportation.

The evidence is that at the present time commuter services of Canadian Pacific are not a burden. Mr. Emerson said:

"Mr. Cooper: If I understood you correctly this morning these commuter services are no longer a problem?

Mr. Emerson: No, I think not. They are meeting their costs and are not a burden on other services so far as our figures indicate."

(Vol. 110 - 18350/1)

The Board of Transport Commissioners takes the view that these services should not be operated at a loss. Canadian Pacific is in full agreement with this view. It is the position of Canadian Pacific that any losses from commuter services should not be charged against freight services.

This, then, leaves the question as to the proper disposition by the Commission of the matter of the passenger train burden. The suggestion has been made that the deficit of passenger train services should be met by national subsidy, or that a subsidy should be paid in cases where the Board has denied an application for discontinuance. Canadian Pacific is opposed to these proposals.

As Mr. Emerson's evidence indicated the rapid change in the travelling habits of the public, which has overtaken the railways, has created the passenger train service problem now before the Commission.

The Board of Transport Commissioners has consistently taken the position that passenger losses must be compensated from freight earnings. In its judgment of November 17, 1958 (the 17% Case) the Board said:

"In its 21% Judgment of March 30, 1948, the Board stated that railway passenger services and freight services are inter-related and revenue losses or deficits from passenger services on the one hand must necessarily be compensated by earnings from freight on the other if railways are to continue to operate and furnish required services, and the Board disagreed with the submissions that it could authorize no increase in freight rates, if such increase to some degree were necessary to correct deficiencies in aggregate railway earnings growing out of inability of the passenger service to meet its full share of the revenue burden. The Board confirms this previous view."
(1958) 77 C.R.T.C. 113 at 134.

It is very difficult to state categorically that this burden is actually a burden on the freight shipper in view of the restricted net rail earnings of Canadian Pacific. It was Mr. Emerson's view that the passenger burden had been borne by the shareholder and not by the freight shipper (Vol. 114 - 18877 and 18907). In any event it is the submission of Canadian Pacific that to the extent that the burden is now on the freight shipper, it should continue there until Canadian Pacific is able to phase out of loss passenger services subject to a reasonable time limit.

Mr. George Paul, appearing for the Canadian Manufacturers Association, dealt with the passenger deficit situation as follows:

"Mr. Sinclair: Well, then, Mr. Paul, if that is your position, that since in the last few years, we will say the last five or six, there has been a marked change in the requirements for rail passenger service that a few years earlier was not so, why should the railways, when they are making this transition, be denied the right to make it in an orderly manner and to have the interrelation that existed when they bought first class passenger equipment and things of that nature recognized until a reasonable time passed.

Mr. Paul: Well, I am all for an orderly transition, Mr. Sinclair, and I wouldn't object to the freight contributing on a temporary basis until the matter is adjusted.

Mr. Sinclair: Now, Mr. Paul, you said that there might be local interests, local public interests, that would require a passenger service or might want a passenger service, and if they did and it couldn't make money, meet its variable costs, then that local interest should be required to pay for it. That would be, I think you said, municipal or provincial; that would be what I mean by local; is that correct?

Mr. Paul: That is if they demand a service that --

Mr. Sinclair: Not paying its way?

Mr. Paul: Yes.

Mr. Sinclair: They should pay for it by guaranteeing the railways against loss; is that what you had in mind?

Mr. Paul: Underwriting the deficit.

Mr. Sinclair: And then you said there might be a situation where passenger service was required for national defence, and under those circumstances you would look then to the federal treasury, because national defence is a national interest?

Mr. Paul: It is a federal obligation, yes.

Mr. Sinclair: That wouldn't be subsidy, would it? That would be the railways billing the Department of National Defence just the same as they would today?

Mr. Paul: Well, I would say so, yes. I wouldn't consider it as a subsidy.

Mr. Sinclair: So if, for instance, in the interests of national defence it was necessary to keep available for emergency passenger equipment, mothballed, as it is known, the cost of doing that would be a cost which the railways would bill to the Department of National Defence?

Mr. Paul: I would say that is reasonable.

Mr. Sinclair: And that is what you had in mind when you gave your evidence about that, was it?

Mr. Paul: Yes."
(Vol. 54 - 9937/8).

The above evidence is in agreement with the evidence of

Mr. Emerson.

The position of Canadian Pacific is that passenger train service is a managerial problem and that it should be left to management to work out.

Mr. Fred Hawes, the spokesman on behalf of the Victoria Chamber of Commerce agreed that passenger train service is a managerial problem. On being cross-examined on this point by Mr. Frawley, Mr. Hawes said:

"Mr. Frawley: ... And I put it to you -- let me just put it to you very frankly that there is just as much reason to go to the Federal Treasury for a subsidy to make up these 'X' dollars they lose every year on passenger service, as there is to go to the Federal Treasury to make up the loss of handling grain to export positions in western Canada. Do you agree with me?

Mr. Hawes: No, I would not agree with you.

Mr. Frawley: You would say, then, that the passenger deficit should be left to the railways to work out, and, if necessary, leave it on the rest of the freight traffic?

Mr. Hawes: Right."
(Vol. 38 - 6181/2)

Subsidies or the possibility of subsidies on passenger train runs operating at a loss would merely perpetuate the problem.

Mr. Emerson stated:

"Canadian Pacific is firmly of the view that the passenger train problem is not one requiring solution by way of national subsidy. Passenger train service on Canadian Pacific is no longer required for the economic well-being of Canada. It does not meet a national need for sociological reasons because of alternative forms of transport between points situated on the Company's lines. Canada and its rail transport industry cannot afford the luxury of providing costly and unnecessary passenger services. If a national subsidy were to be applied and thereby perpetuate unnecessary passenger service, it would be a flagrant misuse of public funds."
(Vol. 109 - 18268/9)

The Turgeon Royal Commission stated:

"The Commission does not subscribe to the view that the federal government should subsidize passenger traffic."
(Turgeon Report, p. 137)

The spokesman for the Province of Quebec, Colonel J. J. Harold, had a similar view. His evidence was:

"Mr. Sinclair: Now, Mr. Harold, for a moment may we turn to passenger services, and I think that you have made it clear in answer to my friend that your province would not be in favour of subsidies for passenger transportation?"

Col. Harold: That is a general basic rule for all transportation.

Mr. Sinclair: Then, I take it you would agree with the statement of the Turgeon Commission, and I am going to quote from page 137 of the Turgeon report on transportation, and where I find these words which I will quote to you:

'The Commission does not subscribe to the view that the federal government should subsidize passenger traffic?'

Col. Harold: I certainly do."
(Vol. 126 - 20861)

The Canadian Industrial Traffic League, an association of traffic management personnel representing some 550 firms and having some 110 members across Canada, through their General Secretary, Mr. Eric Gracey, stated the position of the League on the passenger issue in this way:

"Mr. Cumming: Reverting for a moment to this question of subsidies, there is a matter that I overlooked. You picked out only the Crow's Nest movements, only the grain movements, as a field in which you think subsidies should be paid. Does the League have any views about any other deficit traffic, if there be any, which might be maintained in the national interest and which should therefore be subsidized?"

Mr. Gracey: We feel that if there are any deficit operations the railway management should look after those themselves.

Mr. Cumming: I have in mind, to be specific, passenger deficits. There may be a deficit in railway operations on their passenger trains.

Mr. Gracey: It is our opinion that the railways have facilities to correct that situation themselves.

Mr. Cumming: So you would not suggest that there be any subsidy in respect of passenger traffic at all?

Mr. Gracey: No, sir.

Mr. Cumming: Would you stay with that view even if the Commission were of the opinion that it was vital in the national interest that deficit passenger operations be continued?

Mr. Gracey: We have not considered it vital in the national interest at the present time.

Mr. Chairman: On passenger traffic?

Mr. Gracey: On passenger. This is a matter of managerial decision on the part of the railways.

"Mr. Cumming: Then passenger operations are being carried on at a deficit, and you do not suggest that they be subsidized by the national treasury. Are we to assume that the League is prepared to see freight traffic carry the burden of any deficits there may be?

Mr. Gracey: May I put it this way? We would be most critical of railway management if they allowed it to persist.

Mr. Cumming: But you do not want it subsidized and you do not want any compulsion on the railways to abandon passenger traffic?

Mr. Gracey: We believe they are working to correct it now.

Mr. Cumming: And the League's position is that this is purely a matter for railway management?

Mr. Gracey: That is right.

Mr. Cumming: And you are content to leave it that way?

Mr. Gracey: Right."
(Vol. 52 - 9686/7)

The Railway Act does not contain a specific section dealing with the discontinuance of passenger train service. However, Section 315 gives the Board broad general power as to the service provided. The practice of the railways has been to notify the Board in advance of reductions in service and apply to the Board for approval of discontinuance of all passenger service on a given segment of the line.

The railways in carrying out their practice of applying to the Board for approval of discontinuance of all passenger service on a given segment of line are met with the onus of proof that the Board applies in such cases:

"The Board applies the following principle in applications for discontinuance of train service i.e. will the loss and inconvenience to the public, consequent upon a discontinuance of service, outweigh the burden that continued operation of the service would impose upon the railway company?"
(Re application Canadian Pacific Railway Company for discontinuance of passenger trains 41 and 42, 49 J.C.R. & R. 698 (March 1960))

It is the position of Canadian Pacific that in applying this principle the Board places an unfair burden on the railway in requiring it to meet the onus and Canadian Pacific is of the view that the burden should be shifted to those who oppose the railway's application.

The Victoria Chamber of Commerce recommended:

"The railways should be free to abandon unremunerative passenger services provided that a suitable alternative

means of travel is available to those affected."
(Vol. 38 - 6155)

It might well be that because of the pervasiveness and intensity of competition in the passenger field throughout Canada that the Commission might think the time had come to allow the railways complete freedom in the discontinuance of passenger train services and to state this in appropriate legislative form. Canadian Pacific while recognizing that such a position would not create an unfairness to the travelling public, nevertheless believes that this might be considered as too big a step to take at this time. Accordingly, it advanced a more conservative proposal (Vol. 109 - 18267/8 and Appendix of Proposed Legislation attached hereto). The key point of the Canadian Pacific proposed amendments to the Railway Act would result in shifting the burden of proof to the person or persons opposing the railway's application to discontinue passenger train service. As Mr. Emerson expressed it:

"It is the view of Canadian Pacific that the responsibility of the railway company is only to show the use made of rail service and the burden that continued operation of the service would impose and thereafter the burden should be on any person opposing."
(Vol. 109 - 18267)

Concomitant to this is the proposal of Canadian Pacific that a passenger train service loss having been established, the service would only be continued when the Board was satisfied that sources of revenue for a reasonable period in the immediate future to offset the loss were guaranteed.

It is the submission of Canadian Pacific that on its system there is no passenger train required in the national interest; that national subsidy or the possibility of subsidy would only perpetuate loss service and be a misuse of federal funds; that in the transitional period while Canadian Pacific is phasing out of loss passenger services freight should continue to carry whatever burden there may be; that the Canadian Pacific proposed legislation amply protects the particular segment of the public that would be affected by any discontinuance of passenger service; and that therefore the proposed legislation should be recommended by the Commission.

There is one other issue in the passenger field which must be dealt with. That is the question of free and reduced rate transportation as provided under the Railway Act and other Federal statutes and the General Order No. 656 of the Board of Transport Commissioners.

Free Transportation

Mr. Emerson in his evidence outlined the effect of free and reduced rate transportation on passenger train operations (Vol. 109 - 18269/73).

Mr. Emerson pointed out that Canadian Pacific is required under Section 351 of the Railway Act to provide free transportation to members of the Senate, House of Commons and Board of Transport Commissioners and, further, is required to give free transportation under the Customs, Immigration, Canada Grain and Post Office acts to officers of these respective departments. Further, under Section 350 of the Railway Act, free or reduced rate transportation is permissive to various other persons as contained in the Board's General Order No. 656, dated December 13, 1943.

It was pointed out that in the 12-month period ended February 1960, Canadian Pacific provided free transportation to an estimated total value of \$6.7 million. Canadian Pacific has been endeavouring in recent years to minimize the issuance of free transportation and thereby improve passenger revenues. Restrictions have been imposed progressively including the elimination of free transportation for commuter service. Notwithstanding these restrictions, a substantial amount of free transportation of both the statutory and permissive type is still a factor in Canadian Pacific passenger train operations.

When Mr. Emerson gave his evidence in the fall of 1960, he informed the Commission (Vol. 109 - 18271/2) of the restrictions Canadian Pacific intended to make effective January 1, 1961.

Because the proposed effective date for change was in the middle of the Christmas holiday season, it was suggested and Canadian Pacific agreed, to defer the implementation of the restrictions to February 1, 1961. Moreover, it was suggested that it would be inequitable to change the free transportation privileges of members of Provincial legislative bodies until the recommendations of the Commission with regard to the Company's proposals with respect to mandatory free transportation had been made or to implement changes for dependants of members of Parliament during the current Session. Canadian Pacific agreed with these suggestions.

Accordingly subject to the above the following further restrictions on free and reduced rate transportation issued under General Order 656 were made effective February 1, 1961:

- (i) Employees and dependants of other railways or transportation companies will be required to pay one-half fare.
- (ii) Existing free transportation privileges will be continued to: destitute and homeless persons; directors, officers, agents and employees of Canadian Pacific and their dependants; retired officers and employees of Canadian Pacific and their dependants and dependants of deceased officers and employees; officers and employees of traffic associations and similar joint agencies and dependants; members of provincial legislatures; Governor-General and staff and dependants; officers of Departments of Immigration and Customs of the United States whose duties require them to travel on trains; officers and employees of the Department of Citizenship and Immigration; railway Y.M.C.A. officers and employees and dependants; forest officers of the Dominion Government; commissioners and certain employees of the Board of Grain Commissioners; officers of the Department of National Revenue; officers and employees of the Post Office Department as required by the Postmaster General; police officers; Lieutenant-Governors and members of provincial cabinets of the various Provinces; railway labour organizations' officers; experts rendering services to the Company under certain contracts between vendors and the Company; movement of Government business cars used by the Governor-General and members of the Federal Cabinet; and movement of Government agricultural demonstration cars and Canadian Forestry Association demonstration cars.
- (iii) All other free transportation issued under authority of General Order No. 656 is to be eliminated.

Canadian Pacific considers that it is inequitable that the statutory provision of free transportation to members of the Parliament of Canada should be a burden on the railways and on shippers.

It is the position of Canadian Pacific that the railways should be reimbursed for the value of such transportation. It is considered only equitable that the Canadian Government should pay for the transportation of its officers and representatives as it does for the movement of freight on its account or when departmental representatives travel by air.

Canadian Pacific has not proposed that individual members of Parliament or Government officers should be required to pay their own transportation but simply that they present certificates to railway ticket offices and be provided with regular tickets for which the railways would be reimbursed through periodic billing of the Government.

Neither in the United States nor in the United Kingdom is there a mandatory requirement on railways to provide free transportation to elected legislative members or to Government officers and employees.

The Duff Royal Commission dealt with the issue of free transportation as follows:

"We are of the opinion that where the statute imposes an obligation upon the railways to provide free transportation for members of the federal parliament or provincial legislatures and their dependents (sic) or for civil servants and dependents, the state should bear the cost of the service involved". (Duff Report p. 46, para. 125)

Before the Turgeon Royal Commission the railways did not propose legislative action to meet the free transportation obligation which was imposed upon them and the report did not deal with the question.

The necessity of reducing passenger train services to the true demand and maximizing revenues is great and it is extremely difficult for the railways to restrict free transportation when people who have enjoyed this privilege see members of the federal government riding free.

It is, therefore, proposed by Canadian Pacific that Sections 351 and 352 of the Railway Act be repealed and new sections be substituted to provide that no railway company is required to give free transportation to any person, leaving it to the railways to extend reduced rates or free transportation to their employees and other persons subject to the overriding supervision of the Board. The amendments which Canadian Pacific proposes to Sections 351 and 352 are set out in Volume 109 - 18273 and in the Appendix of Proposed Legislation attached hereto.

V - ECONOMICAL AND EFFICIENT RAILWAY TRANSPORTATION

The third specific directive to the Commission required it to consider and report upon:

"the possibilities of achieving more economical and efficient railway transportation".

Mr. Emerson said:

"Economical and efficient railway transportation is achieved through management making the best use of plant, labour and materials to meet the requirements of shippers at the lowest total cost. Throughout the post-war period the major task of Canadian Pacific has been to adapt its operations so as to minimize the impact of rising labour and material costs and to meet intensive competition from other transport agencies."
(Vol. 109 - 18191)

The evidence of Mr. Emerson contains a review of the reaction of Canadian Pacific to the changes occurring in the post World War II period (Vol. 109 - 18191/18220). Significant Canadian Pacific figures from the evidence covering the period 1947 to 1959 are:

- the average weight of all freight trains increased by 32.6%;
- the average speed of freight trains increased by 24.7%;
- gross ton miles per freight train hour increased by 66.1%;
- gross ton miles per employee hour worked increased by 27.3%;
- railway operating expenses in 1959, although substantially higher in total and per unit than in 1947, were \$101 million

less than they would have been if the 1947 level of efficiency had remained.

Mr. Emerson discussed some of the major changes which have resulted in improved efficiency, which he noted were brought about primarily by capital expenditures of \$909 million. These include the dieselization of road and yard operations; improvements in freight and passenger equipment; the extension of automatic block signal territory; the mechanization of certain road maintenance practices; the adoption of new technology and improved methods in terminals; and the mechanization of data processing.

Mr. Emerson gave the following overall assessment of these improvements:

"While I do not suggest that we have a perfect record in improvements in efficiency and in the securing of economies, I certainly believe that the company's record is good."
(Vol. 109 - 18220)

Mr. W. B. Saunders said:

"I am quite satisfied that C.P. is a very efficient railroad, and I have a very high opinion of its operating people and its traffic and accounting and research people. I consider that this is one of the best managed properties ..."
(Vol. 129 - 22188)

Some evidence on the question of economies and efficiencies in railway operations was advanced by Manitoba (Vol. 92 - 15766/88). Manitoba produced some figures for what it termed "very heavy outlays by the railways in recent years for maintenance of way, equipment, etc., which the railways alleged were required for improvement and modernization of their plant", and several tables giving limited statistics.

With respect to the figures produced by Manitoba as being expenditures "for improvement and modernization of their plant", Mr. Emerson pointed out that the implication was that these had been spent for improvement and modernization of the railway, but charged to expenses rather than to capital. Mr. Emerson explained how the railways' accounts are prescribed and supervised by the Board of

Transport Commissioners under its Uniform Classification of Accounts, and that the figures reported by Manitoba for the years 1946, 1948 and 1953 to 1958 were, in fact, Canadian Pacific operating expenses, excluding taxes and rents (Vol. 110 - 18291). Mr. Emerson said that these figures did not include any expenditures of a capital nature. (Vol. 110 - 18292/94)

With respect to the Manitoba tables of statistics, Mr. Emerson pointed out that these did not include what are the most comprehensive indicators of operating efficiency, namely, average freight train weight, average freight train speed and gross ton miles per freight train hour (Vol. 110 - 18294) and which had been used by Mr. Emerson in Exhibits 165, 166 and 167. Moreover, the Manitoba statistics were based on all Canadian railways as a group. Mr. Emerson filed Exhibits 173, 174, 175 and 176 to show, on the Manitoba basis, the Canadian Pacific figures instead of figures for all railways, as set out in Tables 13, 14, 15 and 16 of the Manitoba submission.

There are three points to note in connection with the statistics used by Manitoba. In the first place, a tabulation of statistics for all railways does not give any indication of the efficiency of an individual railway -- statistics for each individual railway must be examined. Secondly, when considering comparative statistics over time of an individual railway, one must take into account changes and factors affecting the basis of comparison. For example, Mr. Emerson pointed out that the increase in empty car mile ratio to total car miles from 32.2% in 1949 to 34.1% in 1958 was attributable to the increase in the movement of Canadian Pacific cars to the United States railroads through the western gateways, which had to be met by moving empties from Eastern Canada to the West (Vol. 110 - 18303/4).

Thirdly, in making a comparison of efficiency in the utilization of freight equipment it is improper, as Mr. Emerson pointed out, to use total units in the inventory as Manitoba did.

The proper figure is the number of cars on line. The disability of using cars in the inventory arises from the fact that Canadian Pacific uses cars belonging to other railways and vice versa.

As Mr. Emerson pointed out, in 1949 Canadian Pacific was using a much greater proportion of foreign-owned cars on line than in 1958 and a smaller proportion of Canadian Pacific cars were on foreign lines in 1949 than in 1958 (Vol. 110 - 18397).'

Mr. Emerson summed this up by saying:

"Perhaps this whole matter illustrates the importance of a knowledge of the background of what underlies statistics before they are used. For a proper interpretation of statistics one must have some knowledge of the relationship between the different elements employed, the factors at play which affect the figures in that relationship and, of course, they have to be exercised with judgment."
(Vol. 110 - 18304)

On the question of efficiency being determined by comparison of statistics from different railways, Dr. Williams said:

"Mr. Brazier: Would it be true that in the United States you have a great number of different railways operating in the various regions?

Dr. Williams: We certainly do.

Mr. Brazier: And there would be quite a difference between the different efficiencies of the different railways?

Dr. Williams: Well, the question of difference of efficiency among railroads is always a thing which is very hard to judge because no two railways operate under the same circumstances. Any direct comparisons, while they may appear to suggest differences in efficiency, are also subject to many, many qualifications and other possible influences, so that a person would be a very brash one indeed who suggested that on a statistical resolution X railroad was more efficient than Y railroad."
(Vol. 102 - 17074)

With regard to the possibilities of achieving future efficiencies and economies on the Canadian Pacific, Mr. Emerson said:

"Canadian Pacific has a number of matters in hand at all stages of development, some of which after further study may be abandoned. We have no doubt that our efficiency will improve. Canadian Pacific must and will improve the utilization of its plant and adjust its labour intensity, but this will not happen quickly. New methods and new techniques will be developed; existing methods and existing techniques will certainly be applied more effectively. If I could be assured that the inflationary pressures that have been such a problem

"would disappear, I am confident that our unit costs of transportation would be reduced, but, frankly, I do not look for these pressures to disappear. What I envisage is that in the next ten years, unit costs of transportation will increase, but not at the rate of the last ten years."
(Vol. 109 - 18221).

Mr. Emerson then reviewed some specific areas in which he expected further progress. These include: maintenance practices for diesel locomotives; development of new techniques for planning a better distribution of freight car equipment; analyses to determine the economic replacement of freight equipment; use of radio in terminals; the further installation of centralized traffic control on territories where it can be economically justified; further improvements in the efficiency of yard operations; new developments which offer possibilities for reducing road maintenance expenses; and the future uses of integrated data processing. Mr. Emerson also described the functions of the Research Department, which he said "is available for and is continually engaged in the investigation of various transportation problems" (Vol. 109 - 18230). Mr. Emerson's overall assessment was "we have by no means exhausted the potentialities" (Vol. 110 - 18338).

The railway industry is not an exception in having problems to deal with. Mr. A.L. Fairley, President of Dominion Steel and Coal Corporation and its subsidiary companies, agreed that it is not unusual for a company to have problems and that that is what management is for - to work at them and to solve them (Vol. 90 - 15437).

The approach of Canadian Pacific management to the solution of its problems was indicated by Mr. Emerson:

"We are always endeavouring to take advantage of new scientific and technological developments but we are careful to test ideas on the ground and to listen attentively to the man with a background of experience in the maintenance and operation of our own railway."
(Vol. 109 - 18221).

Some people apparently influenced by figures of intercity ton miles, have concluded somewhat too hastily that railways are a

declining industry. The comparison generally made is that of the percentage of intercity ton miles in Canada carried by rail in 1947 as against 1958. This shows that the rail proportion dropped from 72.9% in 1947 to 52.3% in 1958.

In 1947 the distribution of freight traffic was still influenced by wartime measures and the rail proportion was substantially higher than in pre-war years. In 1939, rail traffic accounted for only 59.6% of total and in 1938 the percentage was still lower -- 54.7%.

In recent years, the development of pipe lines, which move commodities not previously moved in such large volumes in Canada, has been responsible for much of the reduction in the rail proportion. It is interesting to note that rail in 1958 accounted for 60.4% of intercity ton miles in Canada, excluding pipe line traffic. This is in excess of the rail proportion in the years immediately preceding World War II.

It is clear that railways in Canada are growing, but at a declining rate. This assessment was agreed to by the witness for the Province of Ontario:

"Mr. Sinclair: I think what I pointed out to you was:

'The detail proofs of the statement that the railways are about forty years away from their peak of influence and are now a declining industry are given in Appendix i.'

What you mean by that, I take it, is merely what I said, that they are an expanding industry but at a declining rate of growth?

Mr. McDougall: A declining rate of growth and declining in relation to the growth of population as well."
(Vol. 42 - 7182)

The Province of Quebec reached the following conclusions:

"(1) The Canadian transportation industry as a whole is a growth industry, not a declining industry.

(2) The fact that the transportation industry is growing less rapidly than the Canadian economy as a whole is a good, and not a bad thing for Canada, as

"long as the industry is providing efficient and low cost services. The result is a freeing of resources in the economy which can be devoted to other productive pursuits.

(3) The case for policy recommendations to rush to the rescue of the transportation industry on the grounds that the industry as a whole is a declining one is not justified by the facts.

(4) On the contrary, the facts and analyses support policies which are directed towards helping the transportation industry to make even greater progress in the future of the type it has been making in the past."
(Vol. 124 - 20570)

In speaking of the Canadian transportation industry,

Quebec had railway transportation very much in mind. Professor

Yves Dube, Chairman of the Department of Economics at Laval

University and one of the witnesses for the Province of Quebec, said:

"Mr. Sinclair: Now, just one final point and that is this: from your study and your knowledge of Canada would you agree that railway transportation is not a declining industry in Canada?

Prof. Dube: Well, that is what we have been trying to prove in this section.

Mr. Sinclair: I recognize that. You as a Canadian and close to the Canadian scene are not one of those who look upon the railway industry as decadent or in decline?

Prof. Dube: No, sir, I think we have more development to come in the field of railroad transportation in Canada and in the Province of Quebec."
(Vol. 126 - 20980)

Dr. Williams, the witness for Manitoba/Alberta described

the economic advantages of railway technology in the following terms:

"Dr. Williams: Well, by comparison with other forms of transportation I think those advantages would fall into two main heads. One is the economy of line haul transportation which the railroad is capable of achieving and exceeds, generally speaking, any form of inland transportation that we have with the exception of water transportation where we have available natural waterway conditions that make it possible for effective large scale navigation to be provided at a limited amount of expense. In the improvement of the waterway itself and with the exception of relatively large diameter pipelines, the railroads' economy is very largely to be found in the line haul operation, and it is naturally enhanced when the railroad has available for handling large volumes of traffic and is capable of giving full effect to that line haul economy through movement in quite heavy train loads.

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"The second advantage of the railroad, I think, is its adaptability.

Water transportation, in many instances, and pipeline transportation are much more specialized instruments that are generally most adaptable to the movement of certain bulk commodities in large lots.

Our success in using water transportation for the package movement of general cargoes in competition with a railroad system on the whole has not been very satisfactory, although it is conceivable that in some applications we may make it so by the use of containerization. But I think it is the wide range of capability in the railroad that I would put as its second large advantage."
(Vol. 102 - 17063/5)

These fundamental characteristics of railway transportation ensure that railways will continue to be the basic form of land transportation in Canada. Mr. Crump said:

"Notwithstanding the introduction and expansion of newer forms of transport during the past twenty years, railways now and in the foreseeable future, will continue to be the foundation of the nation's transportation system providing the most economical method of moving the major portion of the country's freight traffic."
(Vol. 26 - 3763)

There were some who appeared before the Commission proposing that Canadian National and Canadian Pacific achieve efficiencies and economies through co-operative measures. This evidence brought into consideration the Canadian National - Canadian Pacific Act, 1933.

The position of Canadian Pacific with respect to this statute was explained by Mr. Emerson (Vol. 109 - 18232/5). In effect, Canadian Pacific said that the Canadian National - Canadian Pacific Act was passed following recommendations of the Duff Royal Commission to remedy what it considered to be: overdevelopment of the railways beyond the then immediate needs of the country; aggressive and uncontrolled competition between the railways; and the trade depression which had greatly reduced the freight traffic offering.

These conditions have changed. The Turgeon Royal Commission pointed out:

"7. There is always some danger of short-sighted economies. Lines which it was once thought prudent to abandon have since been justified by increases in the volume of traffic; and the growth of population has made some measures of co-operation unnecessary. In such questions no judgment can be infallible and the best decision is probably that reached by experienced railway officials."
(Turgeon Commission Report p. 223)

Mr. Emerson pointed out that a joint committee of Canadian Pacific and Canadian National has been established to consider passenger services. He said:

"A program of discontinuing passenger trains on one railway and leaving service to the other where it is the dominant carrier and has a possibility of becoming an economic rail carrier of passengers between jointly served cities, has been under active study. For example, Canadian National is the dominant passenger carrier between Winnipeg-Saskatoon-Edmonton. Canadian Pacific discontinued passenger train operation between these points."
(Vol. 109 - 18234)

The position of Canadian Pacific with respect to branch lines is comparable. Where parallel lines exist, whether owned by one company or different companies and each line is uneconomic, and the withdrawal of one of the two lines would make the remaining line economic, then it is the view of Canadian Pacific that this should be pursued.

Mr. Emerson said:

"Canadian National and Canadian Pacific conduct joint studies as to the possible elimination of uneconomic branch lines in circumstances where one railway has or has a possibility of having an economic branch line serving the same general area. The first step in this program was taken last year and the cases have been presented to the Board of Transport Commissioners and are awaiting judgment. In this way, the application of the dominant theory of passenger train service is applied to freight traffic and still enables the railways to compete economically and provide the benefits of rail competitive service to the shipping public."
(Vol. 109 - 18235)

Mr. Emerson also indicated other fields in which joint committees of the railways have been working to their mutual advantage, as, for example: joint switching; in the preparation of joint specifications for various types of freight equipment;

and the communications field (Vol. 109 - 18233-4). As the Commission knows, the railways are also conducting joint research projects.

Mr. Emerson indicated that a joint purchasing department for the two railways with a view to ironing out the peaks and valleys in the orders for cars, while it might be desirable from the standpoint of the car manufacturers, would not be of any particular benefit to the railways who must, like every business enterprise, relate their expenditures to their income (Vol. 115 - 18979).

During the cross-examination of Mr. Emerson by Mr. Mauro, counsel for Manitoba, questions were raised as to action taken by the Canadian Pacific on a number of projects referred to by the Turgeon Commission. The matter was left over for Mr. Emerson to consider it and to make a report. His report is set out in Vol. 131 - 22477/80. Mr. Emerson summed it up this way:

"The foregoing will illustrate that many of the possibilities of joint co-operative measures which were considered under the C.N.-C.P. Act have been dealt with in the course of normal business by the two companies during the post-war period, that many items not previously considered have also been dealt with, and that this is a continuing process in the day to day operation of both railways."
(Vol. 131 - 22479/80)

The position of Canadian National on this subject is substantially the same as that of Canadian Pacific. Mr. Dingle said:

"I think that significant action has been taken in this connection by the two railroads, particularly in the recent past, and is presently being taken, to indicate their earnestness to co-operate together in their own interest, and that of the public, to achieve more economic operation . . ."
(Vol. 112 - 18648)

"I think it is much preferable to proceed in this manner rather than by legislation directed at forcing the railways to co-operate at the direction of some body, such as the Board."
(Vol. 112 - 18649/50).

Before the Turgeon Royal Commission, it had been urged that in general revenue cases, the Board should not grant increases in rates until the railways had affirmatively shown that all possible economies under the Canadian National - Canadian Pacific Act had been effected. With respect to this, the Turgeon Commission said:

"The suggestion that the Board, in revenue cases, should require the railways to show that they have neglected no possible economy under the Act seems unworkable. It would require the railways to prove a negative and would lend itself to obstruction."
(Turgeon Royal Commission, p. 223)

It is the submission of Canadian Pacific that compulsory co-operation is unworkable and that it would involve the substitution of a regulatory body for the management of the railways. This is because in the final analysis, it would be the decision of the regulatory body as to whether any proposed co-operation should be proceeded with. This is contrary to efficient railway management.

The suggestion that the Canadian National - Canadian Pacific Act should be amended in some way so as to provide compulsory co-operation by statute with overriding authority in some regulatory body to supervise such compulsory co-operation is one step short of nationalization and detrimental to the public interest. As stated earlier in this summation (page 3) with few exceptions, all parties appearing before the Commission expressed themselves as in favour of maintaining Canadian Pacific as a competitive private rail enterprise.

VI - OTHER INCOME

The fourth specific directive to the Commission required it to consider and report upon:

"(d) whether, and to what extent, the Railway Act should specify what assets and earnings of railway companies in businesses and investments other than railways should be taken into account in establishing freight rates;"

It should be noted that this directive asks two questions: "Should the Railway Act specify the assets and earnings?" and "What assets and earnings should be specified?"

Basically, the position of Canadian Pacific is that rail transportation should stand on its own feet, and that income or losses from operations extraneous to rail are irrelevant in establishing freight rates. This has been the position of all tribunals which have considered the question.

In the Eastern Tolls Case (1916) 22 C.R.C. 4, the Chief Commissioner, Sir Henry L. Drayton K.C., said at page 26:

"Some shippers have claimed that, with the Canadian Pacific still making a proper and sufficient return, no increase in rates can be justified.

"As it occurs to me, the mere fact that the Canadian Pacific, as a result in part, as it may be, of its steamship operations, pays a good return to its shareholders, raises no argument one way or the other as to the reasonableness of freight rates in a given territory in which that company operates."

And further at page 33, the Chief Commissioner said:

"The Board can, of course, give no considerations in the present case to these outside investments (of the Grand Trunk Railway) as having any bearing on the question of what freight rates ought to be."

The Drayton Acworth Railway Inquiry Commission in its report of 1917 tested the financial health of major Canadian railways by computing the return represented by net rail earnings on railway property investment. (Page XIII of the Report).

The Duff Royal Commission said:

"It would appear that, at the moment, any adjustment of the freight tolls and tariffs would be inadvisable, but we feel it our duty before passing from this question, to express the view that even under more favourable circumstances the financial position of the railways may be such as to demand that the whole question of tariffs and tolls, in its widest sense, should be the subject of special investigation, with a view to determining whether or not the existing tariffs and tolls charged for the conveyance of freight are just and reasonable both to the railways and their customers. In determining what is fair and reasonable to the railways regard should be had inter alia to the cost (including the remuneration of the capital invested) of providing these services." (Duff Report, page 60).

In the post-war general revenue cases, the Board maintained the same position with regard to the exclusion of other income in rate determination.

In the 21% Case, Chief Commissioner Cross said:

"If the income from profitable outside investments is to be used to reduce what would otherwise be just and reasonable rates, then it may well be argued that if net losses were made in any such undertakings the users of the railway transportation services might be called upon to pay higher rates to recoup such losses. This would be a highly undesirable situation.

"It seems to me that neither the profits nor the losses on other outside investments should be taken into account in fixing just and reasonable transportation rates.

"Moreover, there are operating in Canada railways other than the Canadian Pacific Railway Company and Canadian National Railways which are subject to the jurisdiction of this Board. These other railways are interested in the present application. It would be most unfair to fix just and reasonable rates for other railways on the basis of whatever 'Other Income' the Canadian Pacific Railway or the Canadian National Railways may obtain from sources other than railway operation." (Re General Increase in Freight Rates (1948) 62 C.R.T.C. 1 at 29/30).

One of the recommendations of the Turgeon Royal Commission (which, it will be recalled, was directed to report upon, amongst other things, the segregation of assets, revenues and other income as between rail and non-rail) was that the Railway Act be amended so that the Board of Transport Commissioners:

"be empowered and directed to prescribe as soon as practicable a uniform classification and system of accounts and reports for rail items for the Canadian National and Canadian Pacific railways. Such classification and system of accounts and reports to

"distinguish clearly between rail and non-rail items."

(Turgeon Report, p. 218)

Following this recommendation, Section 387 was added to the Railway Act in 1951. This section required the Board to prescribe for Canadian National and Canadian Pacific a uniform classification and system of accounts and returns: of their assets, liabilities, revenues and working expenditure that relate to railway operations, and (subsection (3)) to "prescribe the items that shall be classed as items relating to railway operations in the accounts and returns".

The Board of Transport Commissioners after what it described as "three years of arduous collaborative effort" prescribed a uniform classification of accounts for Class 1 railroads, effective January 1, 1956. Under this uniform classification, a separation of assets and earnings as between rail and non-rail is made.

The Board prescribed that not only railway operations should be taken into account in the determination of freight rates, but also express service, communications services and highway transport (rail).

As stated previously, it is Canadian Pacific's position that non-rail investments and earnings should not be taken into account in establishing freight rates. There are substantial reasons for this position which may be better understood if a description of the non-rail assets and earnings of Canadian Pacific is given.

Broadly speaking, these may be divided into three classes:

- (a) Investments in properties;
- (b) Investments in securities; and
- (c) Land holdings.

Investments in properties include steamships, aircraft, hotels and other buildings. The Company has owned and operated hotels for many years. These hotels are located in principal Canadian cities and at mountain and seaside resorts. Canadian Pacific was

authorized by its Charter to operate steamships and entered into this business and has operated ships from the early stages. The first line operated was on the Great Lakes, this service being commenced in 1884. In the 1890's, the Company acquired steamships for operation on the Pacific and in 1909 acquired control of the Allan Line with operations on the Atlantic. Currently, ocean steamship operations are conducted between Canada, the United Kingdom and continental Europe. For many years the Company has operated vessels on the B.C. coast. The Great Lakes service has been continued to the present day and in addition, the Company operates a vessel on the Bay of Fundy.

It is quite apparent that these activities are distinct from railway operations. Investment in these activities has been changed from time to time over the years as changing conditions indicate. For instance, ocean steamships are now conducted only on the Atlantic, whereas formerly these activities were conducted on both the Atlantic and the Pacific. Some of the city and resort hotels have been disposed of, as well as investments in other buildings.

To include non-rail properties in rail would mean that railway freight rates would be set on the basis of earnings from operations distinct from rail operations and this would be unfair to the railways in Canada which have no non-rail operations and also to competing transportation media since the level of railway rates is an important factor in competition.

Furthermore, the earnings from these operations are directly affected by changes in economic conditions in some instances in countries other than Canada. There were years in which they provided substantial net earnings but in other years, losses were incurred. The inclusion of extraneous operations, the earnings of which fluctuate widely, would seriously impede the implementation by the regulatory body of stable rate-making policies.

If in establishing freight rates regard is to be given to income received from these activities, it must follow that freight shippers through freight rates will be obliged to make up losses in these activities for the years in which they are incurred. This is the situation which in 1948 Chief Commissioner Cross described as highly undesirable.

Canadian Pacific has made investments in various types of securities since the early days of the Company. The most important of these investments are: a controlling interest in Consolidated Mining and Smelting Company of Canada; investments in companies operating some 4800 miles of railway in the United States; an airline company operating certain international and domestic services; and trucking companies operating across Canada. Some of these investments have produced good returns and others have been unremunerative. The only security investment income that has been significant in relation to total corporate income has been that in Smelters. Yet at the time the original investment in Smelters was made, the prospects were not foreseen as being unusual and the amount invested was small. While in certain years large amounts were received in dividends, the income of Smelters has not been stable by any means since its formation in 1906. Cash flow has not always been towards Canadian Pacific. In 1919, owing to financial needs of Smelters, Canadian Pacific advanced \$2.7 million receiving therefor convertible bonds, and in a number of years no dividends were received.

These investments are no more related to rail operations in Canada than the first class of investments discussed. The reasons given above for not having regard to income from the first class of investments in establishing freight rates apply equally to the income from investments in securities.

In discussing the first class of investments it was pointed out that if income from such activities were to be taken into account, then any losses they incur should also be taken into account. In the case of investments from which Canadian Pacific receives only dividends or interest, there is no corporate obligation on Canadian Pacific to make up their operating losses but additional capital may

have to be advanced. On the other hand, taking into account only income received as dividends and interest, but not taking into account capital losses of the past or the future arising from investment in corporate securities would be inequitable.

The third class to which reference has been made is that of land holdings. Canadian Pacific's land holdings may be divided into three groups:

- those acquired directly by purchase or indirectly as a result of the acquisition of control of other companies which have received land grants;
- those acquired under the provisions of the general Railway Subsidies Act applicable to all railway companies; and
- those acquired under the terms of the contract with the Government of Canada dated October 21, 1880.

With respect to the first group, the reasons indicated above as to income from investments in properties or securities apply equally to the income now being received by Canadian Pacific from these lands. With respect to the second group, no obligations were imposed on railways receiving these other than the obligation to construct the line within a specified time to specifications laid down by the Government. It is sometimes suggested, however, that other considerations apply to the third group.

In order to understand the provisions of the contract for the building of the Canadian Pacific railway, it is necessary to consider the events which preceded it.

The British North America Act, 1867, provided by section 146 for the subsequent incorporation into the Union of "Rupert's Land and the Northwestern Territory", in addition to Newfoundland, Prince Edward Island and British Columbia. By the Rupert's Land Act, 1868, (31-32 Victoria, Chapter 105) the way was paved by the Imperial Parliament for the surrender of the authority of the

Hudson's Bay Company over Rupert's Land. Finally, in 1870, upon addresses from the Houses of Parliament of Canada, an Order-in-Council was issued by Her Majesty admitting Rupert's Land and the North-Western Territory into the Dominion of Canada. In its addresses the Canadian Parliament made it clear that it intended by the establishment of stable government in these territories to promote their colonization and to extend commercial intercourse with the other British possessions in North America.

In 1871, upon addresses from the Houses of Parliament of Canada, an Order-in-Council was issued by Her Majesty admitting British Columbia into the Dominion of Canada. By the terms of Union with British Columbia, the Government of the Dominion undertook to secure the construction of a railway which would connect the seaboard of British Columbia with the railway system of Canada, such railway to be completed within ten years from the date of Union. Thus from 1871 on, the Dominion had another reason to encourage the construction of a railway through the North-Western Territory but the railway must now be constructed right to the Pacific.

It was Parliament's intention in 1871 that the railway should be constructed and worked by private enterprise and not by the Government but that the Government should give assistance in the form of land and money.

The first general statute regarding the Canadian Pacific railway was enacted in 1872 (Statutes of Canada (1872) Chapter 71). This statute provided for a land grant of 50 million acres and a cash grant of \$30 million. Pursuant to this Act, the Inter-Oceanic Railway Company of Canada and the Canada Pacific Railway Company were incorporated the same year. The Government attempted to induce these companies to unite, but they refused to do so and a contract for the construction of the railway was not entered into with either of them. Instead, in 1873 a charter was granted to another company called "The Canadian Pacific Railway Company". This company, however, failed to raise the necessary private capital and its charter was surrendered.

In 1874 a second general statute regarding the Canadian Pacific Railway was enacted (Statutes of Canada (1874) Chapter 14) providing a land grant of 20,000 acres per mile and a cash grant of at least \$10,000 per mile. It recited the failure of the 1872 Act to induce private interests to undertake the construction of the railway and went on to provide for the construction of the railway either by private enterprise or as a public work of the Dominion. Under the terms of this Act in 1875 yet another company was incorporated, but once again, the attempt to get the railway constructed came to nothing because of the failure to raise the necessary private capital.

British Columbia complained to the British Government of the Dominion Government's delay in commencing the construction of a railway to the seaboard of British Columbia as provided by the Terms of Union. Lord Carnarvon, the Colonial Secretary, was appointed to settle the dispute and recommended, among other things, that the date for the completion of that railway should be extended from 1881 to the end of 1890.

Unable to interest capitalists in either the United States or England, the Government of Canada commenced the construction of certain sections of the railway as government works.

Finally, in September, 1880, after several months during which the Railway syndicate was asking for more cash and less land in the Government grant, the Government was successful in reaching an agreement with George Stephen and associates as to terms upon which they were prepared to construct a railway to the Pacific and the contract with George Stephen and his associates was executed on October 21, 1880.

These events leading up to the contract of October 21, 1880, were described by Viscount Simon, giving the judgment of their Lordships in Attorney General for Saskatchewan v. Canadian Pacific Railway Company (1953) A.C. 594 at 611, where he said

"The project of a trans-continental railway which would connect the Pacific coast with the railways in the east of Canada had long been in the minds of Canadian statesmen, and more than one effort had been made to realize the project and attract finance for such a railway. If it could be created, it would not only contribute to the development of trade, but would bind all parts of the Canadian continent together. But in order that the project should be achieved by creating a company, it was necessary to offer investors terms which would attract their support for a railway which would have to traverse immense areas of wild and thinly populated country, and would involve the carrying of its track by steep gradients over the Rocky Mountains. It was among the terms and conditions insisted upon by British Columbia for its admission into the Union that the Government of the Dominion should assume 'the obligation of causing a railway to be constructed, connecting the seaboard of British Columbia with the railway system of Canada'. (See first recital in the preamble of the Canadian Pacific Railway Act, 1881). Clause 16 of the contract, which was ratified by that Act, was one of the inducements, and other clauses of the contract provided that the Government of the Dominion should make a grant to the company of the lands required for the roadbed and the other sites necessary for the convenient and effective construction and working of the railway, that materials of construction should be admitted free of duty, and that there should be granted to the company blocks of land on each side of the railway, which would, of course, increase in value when the railway was made and worked."

The contract having been made, it then became necessary to approve and ratify it by statute and to arrange for the incorporation of the Company to carry it out. This was done by Statutes of Canada (1881) 44 Victoria, Chapter 1. The contract of October 21, 1880, is a schedule to the Act. Scheduled to the contract itself is a form of act of incorporation used as the model on which the Letters Patent incorporating Canadian Pacific were patterned. The Letters Patent themselves were issued under the Great Seal of Canada on February 16, 1881, the day following the assent to 44 Victoria, Chapter 1.

Section 3 of the Act of 1881 provides in part as follows:

"Upon the organization of the said Company, and the deposit by them, with the Government, of one million dollars in cash or securities approved by the Government, for the purpose in the said contract provided, and in consideration of the completion and perpetual and efficient operation of the railway by the said Company, as stipulated in the said contract, the Government may grant to the Company a subsidy

"of twenty-five million dollars in money, and twenty-five million acres of land, to be paid and conveyed to the Company in the manner and proportions, and upon the terms and conditions agreed upon in the said contract, and may also grant to the Company the land for right of way, stations and other purposes, and such other privileges as are provided for in the said contract."

It is to be noted that the transfer of the subsidy of money and lands is to be by way of "grant" and that it is in consideration of "the completion and perpetual and efficient operation of the railway by the said Company as stipulated in the said contract". The exact nature and extent of the consideration flowing from the Company to the Government is therefore to be determined by an examination of the contract.

There is nothing in the language of the Act which in any way limits the broad word "grant" in relation to the subsidy and unless one finds clearly expressed in the contract some words of limitation or the imposition of a trust, one cannot import any intention to limit the normally broad meaning of the word "grant".

Section 6 of the Act provides that the Government shall take security for the continuous operation of the railway for ten years subsequent to the completion in the manner provided by the contract. It may be noted here that by clause 7 of the contract the Company agrees to maintain, work and run the railway forever and that under Section 6 of the Act, the security is limited to a period of ten years.

Clause 2 of the contract requires the contractors to deposit with the Government \$1 million as security for the construction of the railway contracted for, which sum is to be returned to the Company on completion of the railway. This is in accordance with Section 3 of the Act.

Clause 7 of the contract is complementary to Section 5 of the Act and provides that upon completion, the railway including

the portions constructed by the Government "shall become and be thereafter the absolute property of the Company". This clause also provides for the operation of the railway by the Company in perpetuity as follows:

"... and the Company shall thereafter and forever efficiently maintain, work and run the Canadian Pacific Railway."

Clause 9 of the contract contains the Government's agreement to grant to the Company a subsidy in money and land. This agreement is "in consideration of the premises" that is: in consideration of the contractors' obligation to give security; construct the railway in accordance with the standards laid down in Clauses 3 and 4; pay for the portion of the railway 100 miles in length extending from the City of Winnipeg westward; equip the Government portions as provided in Clause 8; and assume the obligation contained in Clause 7 to maintain, work and run the railway in perpetuity.

The Company in consideration of the grants made agreed that "the construction of the Canadian Pacific Railway shall be completed and the same shall be equipped, maintained and operated". The Company was entitled to proportionate payments in cash and proportionate grants of land as construction proceeded, subject to a portion of the subsidy being retained by the Government as provided in Clauses 17 and 20 of the contract as security "for the due performance of the present contract in respect of the maintenance and continuous working of the railway by the Company, as herein agreed, for ten years after the completion thereof." This is in accordance with Section 6 of the Act.

The grants of land and cash to the Company were in consideration of the obligations undertaken by it under the contract. As construction proceeded, the Company became entitled to the cash and land, which were transferred to it and the Company became the absolute owner thereof with an unencumbered title. The subsidies were transferred to the Company by "grant" and no conditions were attached.

By Section 30 of the Letters Patent (i.e. the schedule referred to in the contract), the Company was given power to issue Mortgage Bonds to the extent of \$25,000,000 upon the lands granted, and it was stated that the bonds would constitute a first mortgage upon the lands. This clearly shows that it was the intention of the contract that the Company should have a clear and unencumbered title to the lands. Acting under the powers so granted, the Company issued Mortgage Bonds secured on the lands.

It will be noted that Clause 9 of the 1880 contract contains no provision which makes the grants of land and cash when received by the Company subject to a charge in favour of the cost of operation and maintenance of the railway. Part of the grant was held back as security for the due operation of the railway for ten years. That was the only condition which Canadian Pacific was required to fulfil to obtain clear title to the part of the grant so retained.

The agreement to operate the railway in perpetuity will always be binding upon the Company. If the Company were to default on this obligation, the Government would have a remedy for this default, and all assets of the Company would be attachable to satisfy any judgment which might be obtained against it by reason of the default.

The Government policy was to have the railway constructed by private enterprise. It was obvious that the risk to private capital was great and that the only way in which any private group could be persuaded to undertake the work of construction was by offering them grants of money and lands to supplement the private capital needed.

The finding of the Duff Commission is of significance:

"They (Canadian Pacific Railway Company) had honourably discharged their original contractual obligations with Parliament and the company's lines had played a great part in binding together the western and eastern provinces of the Dominion."
(Duff Commission Report, p.12)

The Company was free under the contract to do what it wished with the land. It was free to sell the lands and distribute the proceeds to its shareholders. In fact, the Company sold much of the land.

If legislation were enacted that required income from lands or rights still retained by Canadian Pacific to be taken into account in fixing freight rates, this would be confiscation of the interest in these lands and rights of Canadian Pacific stockholders. The stockholders made their investments on the basis that has long been recognized namely, that the Company acquired absolute title to the lands and rights by discharging its contractual obligations which was the finding of the Duff Commission. To provide by legislation that income from the Company's lands and rights be taken into account in fixing the general level of freight rates would be a unilateral re-writing of the contract of 1880 and would be contrary to the recognized legal principle that legislation should not affect any right acquired under a prior statute. The rights of the stockholders of Canadian Pacific were acquired under the 1881 statute.

It should be noted that the Board of Transport Commissioners in determining the net investment of Canadian Pacific in its rail enterprise, made full enquiry into the grants made to Canadian Pacific under the 1881 statute and contract to which it referred. The Board disposed of the issue of donations and grants in the determination of net rail investment for rate making purposes. The determination of the amount of net rail investment by the Board has never been challenged.

The conclusions of the Turgeon Commission on the rail - non-rail issue were:

"The two railways and all the Provinces, with the exception of the Province of Saskatchewan, seem to attach importance to having rail and non-rail items segregated on a uniform and consistent basis and all the Provinces agreed that the Board of Transport Commissioners should have the power to determine what items shall be classed as rail and what as non-rail."

.....

"It would seem clear that there is complete

agreement that regulations governing uniform accounting, depreciation practices and the segregation of rail and non-rail items should not be set out in a statute but that appropriate power should be conferred on the Board of Transport Commissioners, instructing it to promulgate the necessary regulations and to supervise their execution."

(Turgeon Report, page 216).

Many of the parties who dealt with the issue of other income were of the view that the Board should be left to deal with the matter of the segregation of rail and non-rail assets. For example, Mr. V.G. Stroud, representing the Canadian Electrical Manufacturers Association said:

"17. 'Other Income'. namely income from railway capital invested in enterprises other than railway transportation, does not belong in the freight rate structure. Such investments are subject to fluctuations of the market and might prove a liability rather than an asset. The revenue earned in railway freight operation should be the exclusive criterion in the establishment of freight rates.

18. The Board of Transport Commissioners has previously ruled that such investments are extraneous to freight rates, a position which our Association supports."
(Vol. 44-7489)

During the examination by Mr. Cumming of Mr. Eric Gracey, representing the Canadian Industrial Traffic League, Mr. Gracey said that the League agreed with the position as expressed in the judgments of the Board of Transport Commissioners and had "no other suggestions" to make (Vol. 52-9700/1).

This also was the view of Mr. George Paul, representing the Canadian Manufacturers Association. Mr. Paul said:

"A rate level fixed as just and reasonable for one company after taking into account a substantial income from other than railway investments, might well be confiscatory for another carrier which did not enjoy the receipt of 'Other Income'. Furthermore, if income from such outside activities were taken into account in determining just and reasonable rail rates, the losses experienced in connection with such outside activities would, consistently, also have to be taken into account, which might justify higher rail rates than otherwise could be sustained. It is submitted that the position taken in the past by the Board of Transport Commissioners with regard to this

question would appear to be the most fair one yet devised, for all concerned."

The Province of Ontario supported the view stated by the Turgeon Commission referred to above (Vol. 42-7110/1; Vol. 43-7224).

The Winnipeg Chamber of Commerce took the firm position that the Railway Act should specify that non-rail income should not be taken into account in establishing freight rates (Vol. 31-4610).

The effect on other transport media competing with the railways was expressed by Mr. Magee, on behalf of the Canadian Trucking Associations (Vol. 60-10779/91). The result of taking into account income from other than rail assets was described by Mr. Magee in this way:

"Complete chaos in many sections of the trucking industry would be the result of such a policy."
(Vol. 60-10791)

It is the submission of the Canadian Pacific that the Railway Act should not specify the assets and earnings of railway companies which should be classified as rail and non-rail. Canadian Pacific agrees with the conclusion of the Turgeon Commission that the segregation should be made by the Board. It is the view of Canadian Pacific that the Board, which was established and exists for the purpose of dealing with railway matters and determining just and reasonable rates, is in the best position by far to make such a segregation.

The principle upon which the Board made its segregation between rail and non-rail was to class as non-rail the facilities which are distinct from those used in Canadian railway transportation service.

There appears to be some misunderstanding with respect to trucking revenues of Canadian Pacific and the account that is taken of them in rail income. Piggyback revenues come into rail freight

account, whether arising from the movement of trailers owned by the Company or outside parties. Many of the trucking routes of Canadian Pacific are operated by the Express Company. All Express revenues, including revenues from pick-up and delivery contracts for the handling of LCL traffic and highway truck traffic carried in Express vehicles, are taken into rail account. The Board of Transport Commissioners has been following closely the development of Merchandise Services and the integration which is the basis of these services. As the Merchandise Services operating problems are worked out, no doubt appropriate amendments and additions to the Uniform Classification of Accounts will be made to reflect this new development. This is an indication of the flexibility which the present Section 387 of the Railway Act permits and which Canadian Pacific believes to be essential.

It is the submission of Canadian Pacific that Section 387 in placing upon the Board the duty of prescribing the items that shall be classed as rail in the railways' accounts and returns is the proper method of dealing with the issue of rail and non-rail and it would not be in the public interest to depart from that principle.

VII - OTHER MATTERS

The final specific directive to the Commission required it to consider and report upon:

"(e) such other related matters as the Commissioners consider pertinent or relevant to the specific or general scope of the inquiry."

Appeals from the Board to the Governor in Council

Canadian Pacific submits that Section 53(1) of the Railway Act be repealed. This subsection provides as follows:

"The Governor in Council may at any time, in his discretion, either upon petition of any party, person or company interested, or of his own motion, and without any petition or application, vary or rescind any order, decision, rule or regulation of the Board, whether such order or decision is made inter partes or otherwise, and whether such

"regulation is general or limited in its scope and application; and any order that the Governor in Council may make with respect thereto is binding upon the Board and upon all parties."

This subsection was first enacted in the Railway Act of 1903, when the Board of Railway Commissioners was established and the subsection has continued in the Railway Act to this day.

The Commission will recall that in the Railway Act of 1903 the Board of Railway Commissioners established by that Act took the place of the Railway Committee of the Privy Council, which, under previous railway legislation, had acted as the administrative body with general jurisdiction over railways. The comparable section to Section 53(1) in the earlier legislation read as follows:

"21. Subject to the provisions of section eighteen, every decision and order of the Railway Committee shall be final: Provided always that either party may petition the Governor in Council, and the Governor in Council may, in his discretion, rescind, change or vary such order as he deems just and proper."

(Statutes of Canada (1888), Chapter 29, Section 21)

It is the submission of Canadian Pacific that Section 53(1) represents a remnant from the early days of administrative policy with respect to railways at the time when railway questions were not as technical and complex and when railways had a monopoly in land transportation in Canada. It is quite apparent that it gives the Governor in Council sweeping powers to act not only on the petition of any party or person interested, but at its own instance to "vary or rescind any order, decision, rule or regulation of the Board". It was natural enough that at the time the experiment was being made of establishing an administrative tribunal, composed of persons appointed to the tribunal, in lieu of the Railway Committee of the Privy Council, which consisted of ministers of the Crown, that Parliament should have thought it fitting to maintain some continuity between the previous system and the new system embodied in the Railway Act of 1903. Administrative tribunals consisting of qualified personnel appointed for that purpose were an innovation at that time.

Today such tribunals represent the accepted policy and practice of Governments everywhere and there is general acceptance of the principle that specialized and technical matters, such as the proper regulation of railways and the determination of matters pertaining to railways should be left to such administrative tribunals.

Repeal of this subsection would not limit either parties appearing before the Board or the Government in dealing with railway matters that come before the Board of Transport Commissioners. This can be gathered from various sections of the Railway Act:

- Section 53(2) which permits an appeal from the Board to the Supreme Court of Canada upon a question of law or a question of jurisdiction, upon leave being obtained from a judge of the Supreme Court;
- Section 44 which permits the Board, on its own motion or upon the application of any party, to state a case in writing for the opinion of the Supreme Court of Canada upon any question that, in the opinion of the Board, is a question of law or of jurisdiction of the Board;
- Section 36 which permits the Board of its own motion, or at the request of the Minister of Transport, to inquire into, hear and determine any matter or thing that under the Railway Act it may inquire into, hear and determine upon application or complaint;
- Section 38 which permits the Governor in Council to refer to the Board for a report or other action any question, matter, or thing arising or required to be done under the Railway Act, or any Special Act relating to any railway company or any other Act of the Parliament of Canada;
- Section 43 which entitles the Board if it thinks the public interest so requires to apply to the Minister of Justice to instruct counsel to conduct or argue any matter in which any public interest may be affected.

These sections are in addition to the full jurisdiction given to the Board under various sections of the Railway Act to

inquire into, hear and determine a vast number of matters relating to the interests of railways and shippers.

The overall purpose of an act such as the Railway Act is to ensure the proper regulation of railways in the interest of the public and the railways. It is the submission of Canadian Pacific that the due administration of these matters is not improved when provision is made in the Act for appeals to be taken to the Governor in Council to vary or rescind any order, decision, rule or regulation of the Board. Such a right invites considerations which may be far removed from the merits of the determination of any particular case.

The intent of Parliament that the Board's decisions should be final subject to an appeal to the Supreme Court upon questions of law or jurisdiction can be gathered from the fact that, by Section 53(9) it is provided that every decision or order of the Board is final and shall not be subject to question or review, restraint or removal by prohibition, injunction, certiorari or any other process or proceeding in any court. This is the usual provision to be found in acts in which an administrative tribunal is given jurisdiction over any particular field of activity. Section 53(9) however is prefaced by the words "save as provided in this section", which has reference to Section 53(1) and Section 53(2).

It is inconsistent with the modern approach to good administration by administrative tribunals that their decision should be reviewable and subject to variation by another body, except in the case of review by the court of last resort on questions of law or jurisdiction.

It is the submission of Canadian Pacific that Canada has reached the state of maturity with respect to the proper administration and regulation of railways in which the provisions of Section 53(1) should find no place.

It has been indicated that certain of the provinces would take a different view from that of Canadian Pacific, but it is noteworthy that under the statutes of such provinces constituting administrative tribunals, for example, the public utilities acts or the conservation acts of Alberta, no appeal is open to a Provincial Cabinet.

The present approach to such matters is apparent from the manner in which Parliament dealt with the comparable situation when it enacted the National Energy Board Act, Statutes of Canada (1959), Chapter 46. By that Act, a Board similar to the Board of Transport Commissioners was established under the name of The National Energy Board with general jurisdiction over oil and gas pipe line companies and companies operating power lines. The Act is obviously patterned after the Railway Act, but it is very significant that no section comparable to Section 53(1) of the Railway Act is to be found in the National Energy Board Act. The only section in which the action of the Board requires the approval of the Governor in Council is Section 44, under which it is provided that the Board may, subject to the approval of the Governor in Council, issue a certificate in respect of a pipe line or an international power line. The Act provides that no person can operate a pipe line or an international power line unless there is a certificate in force with respect to such pipe line or power line (Section 26(1) and Section 43(1)). These sections are the equivalent of the requirement on railways to secure a charter from Parliament before commencing the construction of a line of railway.

When the National Energy Board Act was in committee, and the House was considering Section 18(1) which is the same as Section 53(2) giving the right of appeal from a decision or order of the Board to the Supreme Court of Canada on a question of law or jurisdiction, the specific point that there was no clause similar

to Section 53(1) was put to the Honourable Mr. Churchill, then Minister of Trade and Commerce. Mr. Churchill answered as follows:

"We gave very serious consideration to the subject matter which the hon. member has drawn to the attention of the committee. Our judgment was that the way we have set it out in the bill would be a satisfactory method of dealing with these problems of appeal. We considered the Railway Act, and we have had experience with regard to the type of appeal which emerges from the method outlined in that act. We considered that the new board, dealing as it will with highly complicated and technical matters, should have its findings thereon considered to be conclusive. Other matters of law and jurisdiction are, of course, dealt with in the normal manner.

As we have just discussed with reference to an earlier section, the board is empowered to make changes and review its decisions if new evidence is produced on the basis of some complaint by an individual, and we feel that in matters as highly technical as those which are involved in dealing with the problems that will face the energy board it would be better and more in the interests of the public if the board's findings of fact were held to be final and conclusive.

Very careful consideration has been given to this question, and we think it should be left in this way. If subsequent experience shows that something more should be done, parliament will have an opportunity to consider the matter. The question has been gone into with the greatest of care and we have concluded that this is a satisfactory method."

At page 4154, Mr. Churchill said:

"Our whole intention here was to leave this matter entirely to the board. My hon. friend, with his vast experience in the past, will know the difficulties that would be involved if some other method were used, and I am sure he will be inclined to agree that this is the way it should be done in a matter so complicated and technical."

(House of Commons Debates, Volume 103, May 29, 1959, page 4153/54)

The same point came up when the committee reached

Section 52 of the Act, which provides as follows:

"52. All tolls shall be just and reasonable, and shall always, under substantially similar circumstances and conditions with respect to all traffic of the same description carried over the same route, be charged equally to all persons of the same rate."

The Honourable Mr. Churchill was asked why no provision was made for an appeal in connection with the setting of these tolls, and Mr. Churchill replied as follows:

"That was on clause 18, but certain people went on to discuss other matters, and the question of an appeal on fact was also under consideration, and an explanation of that was made. We looked at it in this way. There has to be some element of finality somewhere and with a board of competent and experienced people examining all the facts that they would have to examine prior to determining whether tolls are just and reasonable, it would be undesirable for that fact finding activity of the board to be placed under review through an appeal. With the provision of an appeal on law and jurisdiction we thought that the rights of Canadians were adequately protected; but this is a specialized operation, determining from a mass of figures and calculations what constitutes a just and reasonable toll, and we were placing this responsibility on the board to make that decision. If, for example, an appeal on fact were carried, as it is in some other matters, to the governor in council, we would be in a difficult position in having to review all matters pertaining to what is admittedly a complicated problem, and we would not be in the same position as the board itself as it gathers experience on this subject. Therefore, it was for these reasons we decided that we should give this a trial, anyway. We are not making claim to any superior intelligence in drafting clauses of this bill. This is our best judgment at the moment. If in the course of time we find that this is not the most satisfactory method of dealing with the matter we shall have to take a second look at it, but for the moment we think the board should be given the opportunity of gaining experience, sizing up the problem, and as time elapses advising us as to whether or not this is the best way in which this difficult subject should be considered. This is another reason why we have placed it as we have and have said that there shall be no appeal from its finding of fact.

(House of Commons Debates, Volume 103, June 1, 1959, page 4205)

It is the submission of Canadian Pacific that the remarks of the Honourable Mr. Churchill represent the modern and correct approach to such matters. Certainly matters relating to the due regulation of railways and just and reasonable freight rates are equally a "specialized operation" and involve "from a mass of figures and calculations what constitutes a just and reasonable toll". Canadian Pacific agrees with the view of the

Honourable Mr. Churchill that there has to be "some element of finality somewhere" and that "it would be undesirable for that fact finding activity of the Board to be placed under review through an appeal".

In recent years the difficulties created by decisions of the Governor in Council in such matters as the amount of income tax to be included in computing railway expenses and the charging of demurrage on grain cars held at terminal elevators are indicative of the problems inherent in appeals under Section 53(1) of the Railway Act.

Canadian Pacific is not unmindful of the fact that Section 53(1) is regarded by some as a haven in the event they are not successful before the Board or even the Supreme Court of Canada. But in the submission of Canadian Pacific, this procedure is neither in the long-term interest of the public nor the railways. By establishing the Board of Transport Commissioners, Parliament has underwritten its reliance and faith in that body. In the interests of the proper administration of railway legislation in Canada, the Railway Act should be brought up to date, and brought into conformity with the provisions of the National Energy Board Act, by the repeal of Section 53(1).

Operation of trucks by railways

Canadian Pacific first offered service by highway in 1931 through its wholly-owned subsidiary, Canadian Pacific Express Company. Because of the depression and war-imposed restrictions, there was relatively little expansion of highway services until after World War II. The present extent of highway services offered by Canadian Pacific through its highway subsidiaries was set forth in Canadian Pacific's letter to the Secretary of the Commission, dated October 5, 1960. Additional information with respect to these services was given in Canadian Pacific's letter to Mr. Fournier (Vol. 113 - 18791).

It is the position of Canadian Pacific that its highway services represent a normal and desirable diversification by the

Company. As Mr. Emerson expressed it:

"After all, the Canadian Pacific is a transportation company and it is our policy and belief that we should be able to use all of the tools of transportation as the circumstances may require. What we are doing here is integrating the use of these different tools to provide the best possible service at the lowest possible cost."
(Vol. 113 - 18767/8)

It was suggested by some parties appearing before the Commission that railways should not be permitted to enter the trucking business because of the possibility of the creation of a monopoly in transportation. Mr. Crump said:

"Now, surely we are in the trucking to a degree, but there can never be any thought of monopoly in the railway again or in any other form of transportation. It has become a highly competitive industry and by asserting ourselves into the trucking industry we hope merely to participate to a degree in that type of service and to give our customers the type of service that he demands."
(Vol. 27 - 3880)

Professor McDougall, one of the witnesses for Ontario, said that he was willing to give railways a "general licence" in transportation (Vol. 43 - 7261). He thought that railways running an integrated transport service could co-exist with independent carriers by truck, and he did not think that there was any danger of the railways reaching a monopoly position. Professor McDougall said:

"Commissioner Mann: You want to rely on the technique of the market place?

Mr. McDougall: As far as humanly possible, yes.

Commissioner Mann: Would that technique be upset if the railways, by virtue of acquiring truck lines en masse, were accused of returning to a quasi-monopolistic position?

Mr. McDougall: I would not think so.

Commissioner Mann: You don't think there is any danger in that?

Mr. McDougall: Not a danger big enough to disturb anybody, because the costs of the trucks are so much more heavily variable costs, and, secondly, the right of entry into trucking is so easy. It is an institutional effort. If the railways were to buy up all the truck lines, what would they do next year? I think it would become one of the sure ways to make a profit; you start a truck line and then sell it, and they would see so early it was a mug's game that they would not enter it at all."
(Vol. 43 - 7267)

Mr. Roy Halliday, presenting the submission of Canadian Lumbermen's Association, said that railways should be a transportation company and should be allowed to handle their business by truck or by rail or by any other means of transportation (Vol. 50 - 9361). He did not think that if this were done there would be any danger of lack of competition (Vol. 50 - 9398).

Mr. George Paul, representing the Canadian Manufacturers' Association, said that if the railways gave straight truck transportation, he did not think that there would be any danger of monopoly. He said the position of the Association is that railways should adopt all methods of transportation that are going to reduce the cost of transportation service (Vol. 54 - 9958/9).

Mr. David Kirk, for the Canadian Federation of Agriculture, said that while his organization had not considered it as a matter of policy, he had no objection to the participation of the railways in the trucking business, unless there was evidence that problems of monopolization are arising, which he did not think was particularly the problem facing transportation at the moment (Vol. 55 - 10158).

Mr. Dickson of the Maritimes Transportation Commission said his personal view was that the railways should be allowed to engage in for-hire trucking, provided their activities in that field do not create an effective monopoly (Vol. 85 - 14696).

When Dr. Hu Harries was before the Commission, he was asked by counsel for the Canadian Trucking Associations:

"Mr. Hume: May I take you one step further without imputing bad faith on the Canadian railroads, but Canadian railroads have now opened large trucking lines. Do you consider there is any danger to competition by reason of the fact that the economic strength of the railroads would permit them if they wished, and I am quite sure they could in certain areas of Canada, to wipe out their competitors if there is no rate regulation or control?

Dr. Harries: I do not consider that to be a problem. As I mentioned yesterday, ten years ago I certainly thought of it as a problem."
(Vol. 98 - 16613/4).

The position of Canadian Trucking Associations was that entry of the railways into the trucking field is not in the public interest and should be stopped (Volume 59 - 10679). Essentially, the position of the truckers was that entry of the railways into the trucking field would create a monopoly (Volume 59 - 10682; 10686; 10692; 10699; 10700).

The truckers proposed two provisions in their draft Highway Transport Act to cover the matter of railway entry into the trucking field. By the first, no licence would be issued to a person engaged in the transport of goods for hire by means other than motor vehicle "unless the Board is of the opinion that it is in the public interest that such licence should be issued". By the second, it would be provided that no transfer of licence or change in share ownership affecting control of incorporated licensees to a person engaged in the transportation of goods for hire shall be approved "unless the Board is of the opinion that it is in the public interest that such transfer or change should be approved" (Volume 59 - 10701). These recommendations were covered by Section 8 (2) and Section 8 (3) of their draft Highway Transport Act (Volume 60 - 10771/2).

Mr. Magee, the witness for Canadian Trucking Associations, said that it was not the position of the Association that railways should be required to divest themselves of trucking firms or interests in trucking firms that they now own and that the Association was speaking only of future entry (Volume 61 - 10921/2).

Mr. Magee said that these proposed sections introduce special considerations and agreed with the Chairman when the latter suggested to him that the C.T.A. did not want to encourage but to discourage anybody coming into the media (Volume 64 - 11356). Mr. Magee also indicated that the opposition of the C.T.A. would apply to applications by railways for truck licences or routes with a view to integrating them with the railway service (Volume 64 - 11366/7/8).

Mr. Magee agreed that the basic objection of the C.T.A. to the railway entry into the trucking industry was the fear of monopoly. Mr. Magee said:

"The Chairman: You emphasize that the fear of monopoly is very real?

Mr. Magee: That is right, Mr. Chairman.

The Chairman: And the issue really is is it real or fanciful?

Mr. Magee: That is right, sir."
(Vol. 63 - 11243)

When the issue of railway entry into the trucking field was raised before the Turgeon Royal Commission, that Commission concluded:

"It would seem that operation of trucks may be an essential and complementary part of railway operation, more especially in view of changing conditions. Under these circumstances it does not appear reasonable that railways should be prohibited from operating trucks or truck lines. There is no evidence to show that there is danger at present of the railways stifling competition by ownership of trucks. This would be a matter to be dealt with if and when the occasion arises." (Turgeon Report, page 153).

Similarly, in the report prepared in 1956 entitled "Transportation in Canada", prepared by Mr. J-C. Lessard for the Gordon Royal Commission on Canada's Economic Prospects, the author stated at page 91/2:

"Insofar as motor carrier services are concerned there is little uniformity in licensing policy. Only five of the ten provinces require proof of public convenience and necessity in granting operating licences, and there are major differences in the degree of control exercised by each. In some provinces, for example, railway applications to substitute motor carrier service for rail service, or to provide a co-ordinated road-rail service, have been considered on their merits. In others there is almost a complete prohibition against a rail-operated highway service. This type of restriction can only result in inferior service and increased national transportation costs".

It is the submission of Canadian Pacific that the fear of monopoly is, in fact, fanciful, and that the evidence before the Commission of the witnesses enumerated above substantiates

that this is so. Certainly there has been no threat of monopoly on the part of Canadian Pacific through its acquisitions of trucking firms. The mere suggestion that a monopoly may perhaps be created in the future is not a proper ground for legislative recommendations, it is submitted.

Canadian Pacific has tried to be of assistance to the Commission throughout its many months of hearings. The witnesses called by Canadian Pacific were experienced, responsible officers of the Company and its consultants outstanding and experienced specialists. Counsel for the Company during cross-examination attempted to clarify and test the views of most witnesses who appeared. If during your final deliberations additional data or further information is required, Canadian Pacific will try to meet your requests promptly.

RESPECTFULLY SUBMITTED

IAN D. SINCLAIR

F. S. BURBIDGE

Of Counsel
CANADIAN PACIFIC RAILWAY COMPANY

February 10th, 1961.

APPENDIX OF PROPOSED LEGISLATION

(1) Appeals to the Governor in Council:

That Section 53 (1) of the Railway Act be repealed.

(2) Branch lines:

That Section 168 of the Railway Act be repealed and that the following sections be enacted:

"168 (1) Where it appears that the cost of operation of a line of railway during a period of three consecutive calendar years and the cost of the movement of traffic originating or terminating on the line during that period have exceeded the revenues attributable to that traffic, the Company may abandon the operation of the line

(a) if no application for a stay has been made under subsection (3), after the expiration of a period of two months from the day on which notice was given to the Board under subsection (2), and

(b) if an application for a stay has been made under subsection (3), after that application has been withdrawn or dismissed by the Board.

(2) Notice of intention to abandon the operation of a line of railway shall be given in writing to the Board and a copy of the notice shall be posted in each station on the line to be abandoned; and, if the Board so directs, a copy of the notice shall be mailed to such users of the line as may be designated by the Board.

(3) During the period of two months immediately following the day on which notice was given to the Board under subsection (2), any person who has used the line during the period of one year immediately before that day may apply to the Board to stay the abandonment of the line.

(4) Unless the application for a stay is sooner withdrawn, the Board shall set the matter down for hearing within the period of thirty days immediately following the receipt by the Board of the application, or within such further period as the parties may agree upon.

(5) Where the Company has given notice of intention to abandon the operation of a line of railway under this section and an application has been made for a stay, the Board may grant the stay if it is satisfied

(a) that the cost of operation of the line during the period of three consecutive years adopted for the purposes of subsection (1) and the cost of the movement of traffic originating or terminating on the line during

that period did not exceed the revenues attributable to that traffic, or

(b) that sources of revenues for a reasonable period in the immediate future sufficient to exceed those costs during the same period have been guaranteed;

and, if it is not so satisfied, shall dismiss the application for a stay.

168A Notwithstanding Section 168 a railway company may, with the approval of the Board, abandon the operation of any line of railway and, except as provided by Section 168, no company shall abandon the operation of any line of railway without such approval."
(Vol. 109 - 18249/50).

That Section 2 (3) of the Canadian National - Canadian Pacific Act be repealed.

(3) Passenger train service:

That the following sections be added to the Railway Act:

"315A (1) Where it appears that the cost of providing passenger service on any line of railway during a period of one calendar year has exceeded the revenues received therefrom for that period, the company may discontinue passenger service on that line

(a) if no application for a stay has been made under subsection (3), after the expiration of a period of two months from the day on which notice was given to the Board under subsection (2), and

(b) if an application for a stay has been made under subsection (3), after that application has been withdrawn or dismissed by the Board.

(2) Notice of intention to discontinue passenger service on a line of railway shall be given in writing to the Board and a copy thereof shall be posted in each station on the line of railway on which the passenger service is to be discontinued.

(3) During the period of two months immediately following the day on which notice was given to the Board under subsection (2), any person who has used the passenger service in respect of which the notice was given during the period of one year immediately before that day may apply to the Board to stay the discontinuance.

(4) Unless the application for stay is sooner withdrawn, the Board shall set the matter down for hearing within the period of thirty days immediately following the receipt by the Board of the application, or within such further period as the parties may agree upon.

(5) Where the company has given notice of intention to discontinue passenger service on a line of railway under this section and an application has been made for a stay, the Board may grant the stay if it is satisfied

(a) that the cost of providing the passenger service during the period of one year adopted for the purposes of subsection (1) did not exceed the revenues therefrom for that period, or

(b) that sources of revenue for a reasonable period in the immediate future sufficient to exceed that cost have been guaranteed;

and, if it is not so satisfied, shall dismiss the application for a stay.

315B Notwithstanding section 315A, a railway company may, with the approval of the Board, discontinue passenger service on any line of railway."
(Vol. 109 - 18267/8).

(4) Statutory Grain Rates:

That the following section be added to the Railway Act:

"328A (1) Notwithstanding anything contained in the Income Tax Act, railway companies which are subject to Section 328 (6) of the Railway Act may deduct from income tax otherwise payable for the taxation year, computed in accordance with the provisions of the Income Tax Act, an amount equal to the difference between:

(a) gross revenues received in the taxation year for transporting grain and grain products at the rate level prescribed in Section 328 (6) of the Railway Act, and (b) gross revenues which would have been received if the said traffic had been moved at an increase of 100% over the said prescribed statutory level or at such level as the Board of Transport Commissioners may subsequently determine and change and alter as changing conditions or cost of transportation may from time to time require; such difference, however, to be reduced by subtracting therefrom the amount arrived at by applying thereto whatever rate of income tax is applicable in the taxation year. The amount of the deduction from income tax so calculated to be certified by the Board of Transport Commissioners.

(2) If in any taxation year the amount which a railway company is entitled to deduct under subsection (1) of this section should exceed the total tax otherwise payable, such excess may be deducted from the tax otherwise payable in the preceding taxation year or in the five taxation years following the taxation year."
(Paragraph 79 of page 25 of Exhibit 47).

Proposed Section 328A to contain a proviso to the effect that any railway company, when its income tax otherwise payable is less than the permissive deduction, may elect to receive the amount of the permissive deduction by way of special credit or cash.
(Paragraph 80 on page 26 of Exhibit 47)

(5) One and one-third rule:

That Section 337 of the Railway Act be repealed.

(6) Free transportation:

That Sections 351 and 352 of the Railway Act be repealed and the following sections substituted:

"351. Notwithstanding anything in any other Act, no railway company is required to provide free transportation to any person.

352. Subject to the provisions of Section 350, no company shall hereafter, directly or indirectly, issue or give any free ticket or free pass, whether for a specific journey or periodical or annual pass, and no company shall otherwise arrange for or permit the transportation of passengers except on payment of the fares properly chargeable for such transportation under the tariffs filed under the provisions of this Act, and at the time in effect."
(Vol. 109 - 18273).

(7) Bridge subsidy:

That Section 468 of the Railway Act be repealed.

(8) General:

That a joint committee of the Board of Transport Commissioners and the railways be established to go over the Railway Act and regulations of the Board to bring them up to date (Vol. 115 - 18981).

Hon. C. P. McTaggart

ROYAL COMMISSION

ON

TRANSPORTATION

SUMMATIONS AND ARGUMENTS

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12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28
29
30

I N D E X

VOLUME 4

SUMMATIONS AND ARGUMENTS

Page No.

C.N.R.	1
Canadian Trucking Associations	61
North-West Line Elevator Association	125
B.C. Lumber Manufacturers' Association et al	156
Saskatchewan Timber Board	159
Great West Coal Company Ltd., and Manitoba and Saskatchewan Coal Co. Ltd.	164
Alberta Wheat Pool	
Manitoba Pool Elevators	
Saskatchewan Wheat Pool	
United Grain Growers Limited	169

END OF VOLUME 4

THE ROYAL COMMISSION ON RAILWAY TRANSPORTATION

ARGUMENT

CANADIAN NATIONAL RAILWAYS

	<u>Page</u>
<u>CHAPTER I</u>	<u>1</u>
OPENING REMARKS	1
<u>CHAPTER II</u>	3
GENERAL COMMENTS	3
<u>CHAPTER III</u>	7
INEQUITIES IN THE FREIGHT RATE STRUCTURE ..	7
A. The Freight Rate Structure	7
B. Minimum or Maximum Rate Control	11
C. Horizontal Percentage Increases	16
D. Statutory Rates	16
<u>CHAPTER IV</u>	18
OBLIGATIONS AND LIMITATIONS IMPOSED UPON RAILWAYS BY LAW ..	18
A. Grain Traffic Moving at Statutory and Related Rates	18
B. Handling Export Traffic Via Canadian Ports	22
C. Free Transportation	22
D. Railway Grade Crossing Fund	25
E. Administration of Subsidies	26

	<u>Page</u>
<u>CHAPTER V</u>	28
THE POSSIBILITIES OF ACHIEVING MORE ECONOMICAL AND EFFICIENT RAILWAY TRANSPORTATION	28
A. Passenger Train Services	28
B. Uneconomic Branch Lines	35
C. General Reorganization of Plant and Facilities	43
D. Co-ordination of Rail-Highway Services	47
<u>CHAPTER VI</u>	55
NON-RAIL ASSETS AND EARNINGS	55
<u>CHAPTER VII</u>	56
OTHER RELATED MATTERS ..	56
A. Railway Legislation	56
B. CN-CP Act	57
C. Subsidies	58

THE ROYAL COMMISSION ON RAILWAY TRANSPORTATION

ARGUMENT OF CANADIAN NATIONAL RAILWAYS

MAY IT PLEASE THE COMMISSION:

CHAPTER I. OPENING REMARKS.

Canadian National has been pleased to assist your Commission in your enquiry into the problems of railway transportation in Canada and the causes thereof.

We have filed with you a joint submission with the Canadian Pacific Railway, dealing with the statutory and related grain rates (Ex. 45), together with a separate submission on the same subject (Ex. 46). You also received our submission of September, 1960, dealing with various matters which are the subject of your enquiry. Senior officers of the Company have appeared before you to give evidence, namely, Donald Gordon, President, S.F. Dingle, System Vice-President, A.H. Hart, Vice-President - Sales, and J.L. Toole, Vice-President, Accounting and Finance, and, in addition thereto, C.L. McCoy, Assistant General Freight Traffic Manager, Rates, Tariffs and Divisions, and R.A. Bandeen, Chief of Costs and Statistics, Research and Development. The Canadian National has also co-operated with the staff employed by your Commission by providing them with all information requested.

In the hope that it may be of assistance to the Commission in consideration of this matter, we feel that it is desirable to bring to your attention briefly the points which have been covered by our submissions and evidence. While they do not always fit neatly into the five headings of your terms of reference, nevertheless,

we propose to group the recommendations and proposals we have put forward under each head of the Order in Council to the extent that that is possible.

CHAPTER II. GENERAL COMMENTS

We would respectfully suggest to the Commission that in analyzing or attempting to assess the problems of railway transportation in Canada you must look in a broad, general way at all aspects of the industry rather than focus attention on some individual aspect of its operation. In our view, it would not be a solution to attempt to modify the present freight rate structure and leave untouched many other serious problems. In the same way, we do not consider that it would be an answer to the problem to deal with the passenger deficit and forget about freight rates. You must look at broad basic matters for a solution. In this connection it should be remembered that the level of freight rates in Canada, which is the price the railways ask for their services, is predicated upon a requirements formula set by the Board of Transport Commissioners which entitles Canadian Pacific to earn a certain amount each year. This amount itself is the result of a calculation of the revenue produced from handling traffic minus the expenditures entailed in providing these services. It is easily seen, therefore, that changes in either the revenues or expenditures will show up in the end result.

A vital aspect of the overall railway problem is the labour-management relationship in the future. Your Commission ruled (p. 135) that evidence was not admissible on general labour relations and alleged restrictive labour practices. It appears obvious that the benefits of the changes to which we make reference cannot be achieved unless the railway labour force is prepared to accommodate itself to them and to co-operate with management in modernizing

agreements respecting labour-management relationships. Indeed, railway labour has such an all-pervasive influence both in costs and in operations generally that there is an urgent and immediate need to find a workable procedure for the settlement of railway labour disputes. In 1958 the Minister of Labour asked for and received recommendations and submissions on this problem and the legislation dealing with it from all interested parties.

Canadian National's general submission (pp. 18401-18514) and its submissions dealing with the statutory and related grain rates (Exs. 45 and 46) deal with those matters, excepting labour relations, which should be considered by your Commission and reported upon to the Government under your terms of reference so that a proper basis may be developed from which Canadian National can increase its revenues for work performed and at the same time make substantial savings in its expenses.

Those matters recommended to you which will improve our revenue position are:

- (a) A proposal for a dynamic freight "competitive pricing" policy.
- (b) Additional reimbursement for the work performed in handling statutory grain.
- (c) Freedom to develop a co-ordinated rail-highway transportation system to win a larger share of the transportation market.
- (d) Additional recompense for work done in handling import and export traffic via Canadian ports in preference to a shorter available route.
- (e) A drastic reduction in statutory free

transportation and placing it instead on a warrant basis.

- (f) The extension and further development of passenger services which are, or can be in the future, self-supporting.

At the same time, we ask the Commission to consider and to take action on those proposals which we have put forward with a view to reducing expenses and eliminating wasteful transportation service:

- (a) The elimination of the passenger train service deficit - by elimination of uneconomic services or reimbursement of the loss in respect of any such services maintained because they are held to be necessary in the public interest.
- (b) The abandonment of all uneconomic branch lines or if any such lines are required to be retained in the public interest, then payment from the public treasury in respect of their losses.
- (c) The creation of a public climate which will support and demand re-organization of railway facilities and services, including the development of merchandise services, and the integration of highway and rail services in the interests of improving efficiency.
- (d) Removal of the financial burden now assumed by the railways in the administration of subsidies.
- (e) Removal of the burden now assumed by the

railways and highway authorities in respect of the maintenance of protective devices and grade separations at rail-highway crossings.

Subject to the railways being able to work out satisfactory arrangements with labour, it is the considered view of the management of Canadian National that when these changes are accomplished the result will be a much healthier railroad economy. The necessity for any substantial advance in freight rates in the future by means of general increases will be greatly reduced and, we hope, made unnecessary, with the possible exception of adjustments in the general level of rates necessary to reflect overall changes in output or price levels. The prize is a great one, not only for the railroad industry but for the shippers and people of Canada generally. Therefore, we cannot urge too strongly upon the Commission our conviction that the proposals and recommendations which we have put before you are those which should be implemented without delay if the general railway problem is to be dealt with realistically.

CHAPTER III.

INEQUITIES IN THE FREIGHT RATE STRUCTURE, THEIR INCIDENCE UPON THE VARIOUS REGIONS OF CANADA AND THE LEGISLATIVE AND OTHER CHANGES THAT CAN AND SHOULD BE MADE, IN FURTHERANCE OF NATIONAL ECONOMIC POLICY, TO REMOVE OR ALLEVIATE SUCH INEQUITIES.

A. The Freight Rate Structure

Canadian National's views on the freight rate structure are set out in Chapter 2 of its general submission, dated September, 1960 (pp. 18405-18416 of the transcript). The development of competitive pricing in the future (p. 18411) will depend to a much greater extent upon cost information now being developed in greater quantity by Canadian National as well as upon market and other studies. Also, as was stated on page 18413,

"To compete effectively with other modes of transportation, railway management must have the discretionary power to apply its best judgment to the situation at hand, to determine the price of its service, and the conditions under which service is offered. It is equally important that the utmost flexibility be retained to allow the railway to adapt to individual circumstances."

Again, at page 18525, Mr. Hart said, when speaking of competitive pricing:

"It puts some emphasis on cost of service, yes. Value of service enters into it from the problem of what you can get above your costs. Competitive pricing really is a cost orientated system and as you say there is nothing really new about it. Really what we are saying is, we must emphasize that it, that this must be the area of our major attack in an attempt to regain our position in the market and to raise our percentage of the market."

While competitive pricing has been in use in the recent past in the railway industry, examples being the use of incentive rates both in Eastern and Western Canada, much remains to be done to make it really effective

in improving the net revenues of the Company. The assistance which we are seeking from your Commission in our endeavour to develop this pricing technique in the competitive area is -

- (a) Greater freedom in the competitive field, "to reflect in the various combinations of price and service offered to the public, the inherent advantages of rail transport." (p.18414). To this end Canadian National has recommended (p. 18415) that Sections 328 and 324 of the Railway Act be amended to allow the railways to set competitive rates based upon ordinary commercial principles of pricing subject to the requirements that the rates:
 - (i) be made known to the shipping public;
 - (ii) be remunerative, i.e., not go below variable cost and;
 - (iii) should not be lower than necessary to meet competition.
- (b) In the area of non-competitive traffic, the present standards relied upon by the Board to ensure that both the shippers and railways have just and reasonable rates, should be maintained (p. 18415). It is realized, of course, that most of the present complaints and dissatisfaction expressed to your Commission have evolved around railway pricing in the non-competitive area. Various proposals have been suggested to deal with this situation, which will be discussed later on in this argument. Canadian National is not opposed

to the development of new standards to judge the justness and reasonableness of freight rates in the non-competitive field and offers its assistance to the Board or any other public body seeking to develop more equitable standards to apply. In the interim, however, it is submitted that the standards of the past should be retained until better methods are developed and proven to be practicable and fair to all concerned.

- (c) Canadian National requests that Section 317 of the Railway Act and Section 32 (6) of the Transport Act be amended to enable the railways to make rates on the basis of quantities larger than a carload, in order that they will be placed in a comparable competitive position with their highway and steamship competitors in Canada and also the railways of United States (pp. 18486-18488).

Note: Coyne, Railway Law of Canada, pages 411 and 412, and reference to Molasses case from New Orleans 235 I.C.C. 485 at 502, where an extensive list of U.S. authorities is given. Canadian Railways have been turned down in their efforts to make such rates, see - Imperial Oil vs. C.F.A. 20 C.R.C., 171 at 180 and Consumers' Co-operative Refineries vs. C.N.R. and C.P.R., 47 C.R.C. 321 at 326.

- (d) Canadian National requests that Sections

156 (1) and 341 of the Railway Act be amended to authorize the Company to make and enter into agreements or arrangements for the interchange of traffic between railways and all other public carriers, such as highway, pipeline, air or water. In addition, authority is also requested by means of such amendments to allow the Company to make an agreement with a trucker or other carrier for carriage over a continuous route by means of two or more forms of carriage and to divide the earnings of the through move between them as may be agreed upon (pp. 18488-18491).

- (e) A further recommendation by Canadian National in line with its recommendation that railways be given as much freedom as possible in the competitive area in the making of their rates is that Sections 328 (1) and 334 of the Railway Act be amended to ensure that when competitive rates are quoted (which, of course, would be compensatory, published, and not lower than necessary to meet competition), such rates would not be subject to disallowance by the Board on its own motion or on any complaint made to it. The Board would be able to proceed under Section 334 to make a full investigation of the competitive rates complained of, using its discretion as to the nature and extent of the investigation which it wishes to make in each case. To this end Canadian National has suggested the elimination of particular directions to the Board as set

out in the present Section 334 and the substitution therefor of general power enabling it to make such investigation and obtain such further information as may be deemed "practicable and desirable" (pp. 18491-18494).

- (f) One further recommendation, bearing upon the freedom of the railways to make competitive rates, is that Section 337 of the Railway Act be repealed because this Section, as presently in use, creates a further rigidity in the rate structure and removes managerial discretion in a certain area and at a time when the rapid growth and expansion of competition demands increased flexibility in meeting that competition (p. 18497).

B. Minimum or Maximum Rate Control.

A great deal has been said before your Commission on the question of what is needed to make the freight rate structure more equitable to its users. Most of the discussion has revolved around the desirability of having minimum or maximum rate control, or both. The advocates of minimum rate control, which included witnesses for the Provinces of British Columbia, Alberta and Manitoba, were generally agreed that rates should not go below the minimum of long term variable cost. Canadian National's view is that the floor for all rates should be the long term variable cost, which is the standard which we have been using. Canadian National is opposed to incorporating this standard for minimum rates in any statute for the same reason that it is opposed to any unnecessary rigidity being placed upon it by legislation.

Some fears were expressed that there might be a considerable volume of traffic moving today at rates less than variable cost. Canadian National does not subscribe to these fears but as the Commission was informed, the costing procedures now being used on Canadian National are being developed very rapidly so that before long examination of particular rates and other tests will show more accurately the relationship between rates and costs for various movements. It is our view, therefore, that any defect which may exist in this area will soon be corrected by the rapid development of costing techniques now under way.

The principal exponents of maximum rate regulation appearing before the Commission were the Provinces of British Columbia, Alberta and Manitoba. Each put before you detailed and well reasoned views as to why the various methods they suggested should be considered. There was general agreement among them with the view expressed by the railways, that in the competitive field the discipline of the market place would protect the shipper from rates becoming too high. Their proposals were directed mainly toward affording protection and some relief to the shippers using non-competitive commodity and class rates.

British Columbia's proposal was submitted by Dr. Hughes, who based his suggestions for minimum and maximum rate control, on the cost of service principle. Dr. Hughes proposed that minimum rate schedules for all carload traffic should be prepared in tabular form based upon the out-of-pocket costs for various carload weights reflecting loading and other basic characteristics set out in a series of mileage blocks. These tables would contain

terminal and route arbitraries (pp. 13396-13402).

Dr. Hughes' proposal for maximum rate regulation would apply only to the captive traffic, i.e., non-competitive commodity and class rates and would be based upon the fully distributed costs for handling such traffic (pp. 13403-13405). Later, under cross-examination, Dr. Hughes amended this proposal by agreeing that the ceiling might be higher than fully distributed cost (pp. 13537-8, 13651 and 13788). The anticipated effect of these proposals is that the minimum rate schedules would ensure that the railways did not handle traffic at rates below out-of-pocket or long term variable costs and the maximum rate schedules would limit the burden imposed upon traffic which did not have reasonable competition for its movement to a prescribed percentage over total cost.

It is interesting to note what Dr. Williams (who appeared for the Provinces of Manitoba and Alberta) had to say about the cost of service (pp. 16979 and 16980):

"Much has been said and written about the making of rail rates upon a cost basis. Wise pricing practices, however, require attention not only to the cost at which a product can be manufactured or sold but to the market conditions which determine the strength and character of demand. Few would, therefore, urge a mechanical adherence to a cost standard in the pricing of the transportation service. Excessive emphasis, perhaps, has been placed upon cost in a good bit of theoretical writing. But this is largely because the traditional value of service concept and the standards used to measure it require revision and because there has been very sharp resistance to such revision. Value of service, in the revised sense noted above, continues to be a valid principle of rate making."

Manitoba proposed a general rate increase formula which would effect part of the increase through a percentage factor and the remainder through an increase in cents per 100 lbs. In order to reduce the effect of too substantial an increase in short haul rates, Manitoba

amended its original proposal to suggest that increases on individual rates be limited to 40%. The anticipated effect of this proposal would be that it would give relief to long haul shippers while not affecting short haul shippers to the point where they would divert their traffic from the railways.

Alberta produced several proposals which would affect the railway pricing policy. The first was submitted by Dr. Hu Harries, who agreed that in the competitive field the rail carrier should be entirely free to set rates as competition dictates. In the non-competitive field he suggested that there be maximum rate control by fixing ceiling rates by statute at a given percentage over the lowest competitive rate published for the same or similar traffic. He suggested this percentage should be 40%. While the ceiling of 40% over the lowest comparable competitive rate was designed to limit and reduce the burden of contribution to general rail overhead from the non-competitive traffic, it would, of course, also affect other competitive rates.

Dr. W.Y. Little, appearing on behalf of Alberta, suggested a cost base rate increase formula which was designed as an alternative to horizontal general rate increases. This formula would endeavour to regulate any general increase in terms of the changes experienced in costs related to length of haul (road haul costs) separate from the changes experienced in costs not related to length of haul (terminal costs). He suggested that after determining the changes in road and terminal costs the rates in Class 100, set out by mileage blocks, would be adjusted to reflect both changes. These adjustments would produce a scale of varying increases to be applied

to all the rates subject to the general increase found in the corresponding mileage blocks. The anticipated effect of this formula is that rate increases would reflect the cost changes, both road and terminal, with the long haul bearing relatively smaller increases than under the present practice.

A third proposal was put forward by Dr. Merrill J. Roberts on behalf of Alberta. He suggested a maximum freight rate regulation formula aimed at setting ceiling rates in terms of a rate-cost ratio dictated by the output and unit costs that would prevail if only non-discriminatory rates were in effect; in other words, the output and unit cost levels that would prevail with uniform pricing. He said that the Board, following a careful study of cost patterns and market analysis, would determine the maximum percentage of mark-up over costs which would be allowed and this percentage would be used to set ceiling rates. Dr. Roberts originally recommended a ceiling of 178% over marginal cost but later under cross-examination agreed that this percentage could be as high as 250%. He anticipated that his proposal would remove from certain shippers any excessive burden of contribution to overhead which they may be called upon to bear under a discriminatory rate making system.

Canadian National is not prepared to accept any of the proposals advanced by the witnesses for the Provinces of British Columbia, Alberta and Manitoba because no one is able to assess their effect upon the revenue position of the railways and the general rate structure. The present data available to us is not sufficient to make a clear decision whether any of these schemes is preferable to the present system. We do not condemn them out of hand

even though we can envisage many difficulties inherent in them. In our view they should be studied and will be studied and assessed in the light of the increasing volume of information and cost data which will be available to us in the future. We would, however, not be in favour of changing to a new form of rate control until we are satisfied that what is proposed has been tested and checked and shown to be fairer than the methods presently used. We suggest, therefore, that we continue to protect the non-competitive shipper by the Board exercising its jurisdiction under the Railway Act in respect of just and reasonable rates until such time as some of the proposed suggestions, or others which may be forthcoming in the future, can be tested sufficiently to ensure that they will not only produce a more equitable method of making freight rates in the non-competitive area but that they will protect the carrier's revenue position.

C. Horizontal Percentage Increases.

Canadian National's views on this matter were given in evidence (p. 18415). While we recognize the difficulties inherent in the horizontal percentage method of increasing freight rates, nevertheless, we consider that it is the best method available to us at the present time. In such circumstances we should not be required to use a different method until it can be shown to be more equitable and tested sufficiently to ensure that the carrier's revenue position will be protected (p. 19816).

D. Statutory Rates

The problem of insufficient revenue return to the carriers for work performed in carrying grain and

grain products from the West to export positions at the present level of the statutory rates is referred to under the heading of your terms of reference "obligations and limitations imposed upon the railways by law for reasons of public policy, etc....". Nevertheless, these statutory rates create inequities in the freight rate structure. Because they do not bear a proper share of the cost of operating the railway they place a burden upon the railway and others which should be eliminated.

CHAPTER IV

OBLIGATIONS AND LIMITATIONS IMPOSED UPON RAILWAYS BY LAW FOR REASONS OF PUBLIC POLICY, ETC.

A. Grain Traffic Moving at Statutory and Related Rates.

Canadian National considers that one of the most serious obligations and limitations imposed upon the railways by law for reasons of public policy is that imposed by Section 328, sub-section (6) of the Railway Act, which deals with the rates on grain and flour to export positions. It has the effect of fixing these rates at the level provided for in the agreement made between the Government of Canada and Canadian Pacific Railway, pursuant to Chap. 5 of the Statutes of Canada, 1897.

Canadian National made a very comprehensive study to determine the cost of moving grain and flour on its lines to export positions in the year 1958. The method used to develop the cost of handling this grain traffic and the results of the cost study are dealt with in detail in the evidence of Mr. R.A. Bandeen (pp. 2184-2433).

The summary of revenue and cost as developed by that study is as follows:

Revenue		\$ 28,700,000
Variable cost	\$ 45,700,000	
Portion of constant cost	18,200,000	
Total cost		\$ 63,900,000
Average revenue per ton mile		0.48¢
Average variable cost per ton mile		0.77¢
Average total cost per ton mile		1.07¢

The result is that in 1958 the revenues from this traffic fell \$35,200,000 short of meeting the total cost.

In 1927 when the Crow's Nest grain rates became applicable on all railways in Canada, by virtue of the enactment of Section 328 (6) of the Railway Act, there existed a known relationship between these statutory rates on grain and the corresponding 8th class standard mileage rates. Parliament when it enacted this legislation determined that the level of these rates was reasonable. Knowing that the class rates have increased substantially over the years since that date, we have found that by applying conventional principles of rate making, as outlined in our submission (Ex. 46), and in evidence (pp. 3035-3041) an increase of 125% in the existing grain rates would be necessary today in order to restore the 1927 relationship. Canadian National cannot emphasize this point too strongly, as we feel that it points up with great clarity the principle we are endeavouring to establish in respect of these rates.

In applying conventional rate making principles, we have taken the key rate from Regina to Fort William of 20¢ per 100 lbs., because Regina is the geographical centre of the grain producing area of western Canada, and the haul to Fort William is 791 miles which is close to the average haul of this traffic to the Lakehead in 1958 of 814 miles.

If the relationship between the Regina statutory rate and its corresponding 1927 class rate is applied to the corresponding class rate in effect on July 31, 1959, the revised rate becomes 45¢ per 100 lbs.

It is also interesting to note that the waybill analysis for 1958 establishes that the revenue per ton mile of all traffic, excluding grain and grain products, was

2.09¢ and the revenue per ton mile for the same year for grain and grain products was .50¢. Refer to the evidence of C.L. McCoy at page 3024.

A comparison of the rates on U.S. grain with export grain in Canada for comparable distances is shown on Exhibit 79G, page 3068. For instance, the Canadian rate from Winnipeg to Fort William, 420 miles, is 14¢ per 100 lbs. as against that from York, N.D. to Duluth, Minn. 420 miles, of 46¢ per 100 lbs. This exhibit shows that the rates in the U.S. are from three to four times those in Canada for comparable distances.

If general rate increases or reductions had been applied on grain moving to export positions since September 13, 1920, the results are shown in Exhibit 79H, page 3071. An examination of this exhibit indicates that had these increases been applied, the rates on grain would have been over three times the present statutory rates.

It is necessary that the revenues from grain traffic now moving at statutory and related rates be adjusted in order that it may bear a fair proportion of transportation costs. In the year 1958 this traffic represented 17% of the total freight revenue on the Western Region but it accounted for 40% of the work performed. In the same year on Canadian National (Canadian Lines) this traffic produced only 6% of the total freight revenue but it required 19% of the total transportation service (p. 3072).

The necessity of increased revenue from grain traffic was established and explained in the evidence of Mr. Gordon, page 1309 and following, where he pointed out the heavy capital expenditures, the effects of inflation on capital account, and higher interest rates. These alone

would justify an upward adjustment in the rates on grain and flour.

The average hourly earnings per employee increased from \$.590 in 1935 to \$1.905 in 1959. This is shown in the annual report of Canadian National Railways for 1959, at page 39 (Ex. 121).

Canadian National's proposal as to the method of paying the railways for the work performed is outlined in Ex. 46, wherein it is stated that the best solution to the problem at this time would be that the rates on grain and grain products to export positions remain under statutory control and the railways be reimbursed for the cost of the work performed in handling this traffic by a payment made to them equal to the difference between the statutory rate and the amount found to be a just and reasonable level of return. This is not in the nature of a subsidy to the railways but is merely providing a means of recouping them for the services performed, as a result of the railways being unable to charge the farmer a just and reasonable level of rates. In other words, if for reasons of national policy these grain rates must be fixed by statute at a level established in 1897, then the people of Canada as a whole should pay the railways the difference between the level of rates fixed by statute and those which this Commission finds are justified on the evidence before it.

Canadian National is strongly opposed to Canadian Pacific's suggested income tax solution. The reasons why such a proposal should be rejected by the Commission are fully explained in the evidence of Mr. Donald Gordon at page 1358, et seq.

The Income Tax Act should not be used in any solution of this problem.

- B. Increased Recompense for Work done in Handling Export Traffic via Canadian Ports rather than via an Available Shorter Route through the Port of Portland, Maine.

Canadian National's position in respect of the burden that it is required to assume in this regard pursuant to Section 21 of the C.N.R. Act is set out at page 77 of its submission, dated September, 1960, and at page 18500 of the transcript, also note at page 18601, et seq. Canadian National's recommendation (page 18502) is drawn to your attention, namely, that if it is to be a continuing requirement of national policy that routing preference be given to Canadian Atlantic ports the additional cost to Canadian National of such policy should be calculated and paid to it out of the public treasury.

- C. Free Transportation

Canadian National in company with the other railways of Canada has placed upon it by law the obligation to carry on its trains, without any recompense, the members of the Senate, the House of Commons, Members of the Board of Transport Commissioners, officers of the Board of Grain Commissioners, Department of National Revenue, Post Office Department, and the Department of Immigration and Colonization. In addition, Canadian National extends to a considerable group of the public specified under General Order of the Board of Transport Commissioners No. 656 the privilege of free or reduced transportation on its trains.

The Canadian National adopted new regulations regarding free transportation, effective January 1, 1961, as follows:

1. (a) Certificates held by Members of the Senate and the House of Commons of Canada, Members, Officers and Staff of the Board of Transport Commissioners will continue to be honoured.
- (b) Passes issued to Dependents of Members of the Senate and the House of Commons will be honoured until the end of the 1960-1961 Session of Federal Parliament.
- (c) Annual passes issued to Dependents of Cabinet Ministers will be honoured until the end of the 1960-1961 Session of Federal Parliament.
2. Annual and trip passes issued to the following categories will continue to be honoured and the 1959-1960 annual passes expiring December 31, 1960, are extended up to and including June 30, 1961, or until such time as new passes for 1961-1962 are issued:
 - Governor-General, and staff, and families;
 - Lieutenant-Governors and Members of Provincial Cabinets and Legislative Assemblies;
 - Staff of Department of National Revenue of Canada;
 - Staff of Department of Immigration & Citizenship of Canada;
 - Staff of Post Office Department;
 - Members of the Board of Grain Commissioners and designated staff;
 - Forest Officers, Board of Transport Commissioners
 - Dominion and Provincial Agricultural demonstration cars and necessary attendants;
 - Canadian Forestry Association demonstration car and necessary attendants;
 - United States Immigration and Customs Inspectors.
3. Annual and trip passes issued to the following categories, expired December 31, 1960, will be extended to January 31, 1961, but will not be honoured thereafter:
 - (a) Ambassadors, Ministers Plenipotentiary, Envoys Extraordinary, and High Commissioners of the Dominion of Canada, including their dependents.

- (b) Deputy Ministers of the Federal Government,
and those having the rank of Deputy Ministers,
as follows:

Under Secretary of State for External Affairs;
 Dominion Archivist;
 Clerk of the Privy Council;
 Auditor General;
 Clerk of the Senate;
 Clerk of the House of Commons;
 Under-Secretary of State;
 Chief Electoral Officer;
 Chairman & Members of the Civil Service
 Commission;
 Chairman, Dominion Coal Board;
 Superintendent of Insurance;
 Director, Soldier Settlement & Veterans
 Land Act;
 Parliamentary Librarian;
 Queen's Printer;
 Chairman, Canadian Pension Commission;

- (c) Also the following:

Members of the Air Transport Board;
 Members of the National Harbours Board
 & designated staff;
 Chairman, Canadian Maritime Commission;
 Officers and employees, and their dependents,
 Railway Branch, Department of Transport;
 Dependents of Members, Officers and staff of
 the Board of Transport Commissioners;
 Private Secretaries of Ministers of Federal
 Government, of Speaker of Senate & House
 of Commons, of Leader of Government &
 Official Opposition in Senate and House
 of Commons;
 Meat Inspection Assistants, Federal
 Department of Agriculture;
 Fire Rangers, Board of Transport Commissioners;

Ex-Ministers of Department of Transport,
ex-members of Board of Transport Commissioners,
and their dependents;

Ex-Officers and staff of the Railway Branch
of the Department of Transport and of the
Board of Transport Commissioners, including
their dependents;

Officers, employees and their dependents
of other railway or transportation
companies;

Officers, Agents and employees, and their
dependents, of telegraph, telephone and
cable companies;

Members of the Press.

In respect of the mandatory provisions of the Railway Act and other Federal statutes, covering the personnel referred to above, we would urge your Commission to recommend amendments to the appropriate legislation to provide that any of the members of Government or Government officers who require to travel by train do so in the manner presently applicable in respect of members of the Armed Forces in Canada and members of the Governments of the United Kingdom and the United States, namely, by use of a warrant for which the Railway would be reimbursed its normal tariff charges. We consider this proposal particularly necessary at this time when viewed in the light of the substantial deficit occurring in Canadian National's passenger train operations. We would, of course, continue to provide transportation for those who are required to perform their official Government duties upon trains.

D. Railway Grade Crossing Fund

The attention of your Commission is drawn to the burden placed upon the Railways by the inadequacy of the legislation providing for the Railway Grade Crossing Fund (pp. 18480-18484). It was considered reasonable by

the Board of Transport Commissioners in its Grade Crossing enquiry conducted in 1954 that a share of the maintenance of crossing protection should be borne by the Fund as well as by the parties involved. No one appearing before your Commission took an opposite view and it is respectfully urged that the recommendation of Canadian National (p.18484) that Section 265 of the Railway Act be amended to allow contributions from the Fund toward the cost of maintenance and operation of protection of any type at existing crossings and at future crossings should be favourably reported upon by your Commission.

The removal of a major portion of this obligation from the shoulders of the railways and the municipalities, which can only continue to become more burdensome in the future unless relief is afforded, will greatly enhance the ability of such parties to contribute in the years to come to the expansion of protection devices and grade separations at rail-highway crossings throughout Canada.

E. Administration of Subsidies

We have drawn your attention to the burden placed upon Canadian National in the matter of administration of subsidies provided for by the Federal Government (p. 18510). We have shown that the cost to Canadian National of financing the time lag in obtaining reimbursement under these subsidies is of the order of \$250,000 a year, and the direct out-of-pocket administrative cost is in excess of \$60,000 per year. We have respectfully requested that action be taken to correct this situation by improving the method for obtaining reimbursement under

the subsidy to eliminate the time lag in receiving reimbursement and also that the administrative costs incurred by the company should be reimbursed to it out of the general funds from which the subsidy is paid (p. 18513).

CHAPTER VTHE POSSIBILITIES OF ACHIEVING
MORE ECONOMICAL AND EFFICIENT
RAILWAY TRANSPORTATIONA. Passenger Train Services

The full story of Canadian National's passenger train services is outlined in the transcript (pp. 18416-18431). The passenger train services' operating deficit for the year 1958 is shown as \$40,858,000 (p. 18418). In arriving at this figure no allowance is made in respect of the value of free transportation and while the method used to calculate the various items of expense is the same technique as was used to calculate the cost of moving Crow's Nest grain, no allowance for any portion of general railway constant cost is included in these figures as the passenger train service is considered a by-product in contrast with the service performed in carrying grain, which must be considered basic to the plant.

In addition, no investment or depreciation cost has been included in this estimate for the reasons set out on page 18419. During the course of the proceedings Exhibit 182 was filed showing the corresponding figures for 1959 with an operating deficit of \$37,955,000.

The reasons for this serious deficit position and the efforts which have been made in recent years to reduce it are shown in the submission of the Company on page 18425. We have given an estimate of the savings resulting from passenger service reductions and adjustments which have taken place in the last six years, amounting to approximately \$13,000,000 a year. Details of the efforts being made by the Company to promote its

passenger services are also set out at pages 18426 to 18428 and a review of the Company's policy in selling its passenger services given at pages 18428 to 18430.

Your attention is particularly drawn to the evidence of Mr. Hart, commencing at page 18546, where he outlines the views of Canadian National as to the future of the passenger business. It will be noted he bases his opinion upon analyses which have been carried out as a result of a massive market survey carried out by Canadian National a year or so ago. He expresses the view that Canadians want and will continue to want, and need, rail passenger service in certain areas; that he believes Canadian National will be able to provide such service at an attractive price, at the same time changing or introducing new types of services to meet demand as it occurs and where analyses indicate that we can perform the service at a profit. He points out at the same time that it is obvious we must abandon services which are clearly unprofitable.

This is the basis for the recommendations made in our submission that we should be allowed to abandon any unprofitable services except those which might be found to be necessary in the public interest and then we should be paid specifically for any loss occasioned in running such service just as if we had been hired to do so. Mr. Hart points out that we intend to compete aggressively in those areas where there is a good passenger travel market and that he does not believe that the passenger train is doomed by any means (p. 18548). It is his view that if we are given the opportunity which will be created by the changes in legislation proposed, we will be able to redesign our facilities, equipment and service to reflect the demand of the travelling public. In addition, at page 18548, Mr. Hart

stated our Company's position to be - "if this is done against the background of getting out of the uneconomic services or being paid to operate them, we will eliminate our passenger deficit and still remain a leader in mass passenger travel in Canada."

It is well known, of course, that the railways have made substantial progress in reducing or abandoning commuter services which cannot pay their way. In recent years we have reduced the areas where commuter services are performed from ten to three. We have also carried out negotiations with municipalities where services are to remain with a view to ensuring that these services are brought to at least a break-even position just as quickly as possible.

Concerning the matter of payment for work performed in providing a passenger service considered to be necessary in the public interest, the question was raised as to whether this might not in some cases be paid by others than the national treasury (p. 18555). Evidence was given on this point as to the number of local services now sustained by subsidy from the Federal Government in various areas of Canada mainly to provide steamship or other services in isolated areas which cannot support such services themselves (p. 18556). It is, therefore, Canadian National's view that the provision of such services, while they may be local in character, are in the national interest because they weld together the fabric of transportation throughout the whole of the country in much the same way that the provision of services by the C.B.C. in remote areas is in the national or public interest. In our view the provision of ferry services and steamship services is

exactly comparable to the position we take in respect of passenger services and branch lines. On the other hand, commuter services do not fall in the same category as they are clearly matters of local interest and we propose to deal with them as such (p. 18557).

We would refer you again to the recommendation made by Canadian National in respect of its passenger train services where it suggested an amendment to the Railway Act (p. 18430) as follows:

"315A. (1) Notwithstanding anything in this or any other Act the company may, subject to this section, discontinue the operation of any passenger train service whenever the revenues from such service fail to meet the cost of operation.

(2) Ninety days' notice of any decision of the company to discontinue any passenger train service shall be given to the Board.

(3) The Board may, with the approval of the Governor in Council, by order, restrict or forbid the exercise of any right under this section whenever, in its opinion, the maintenance of the service is required in the public interest.

(4) The amount of any loss to the company arising out of any order made pursuant to subsection (3) shall, upon verification and certification by the Board, be paid to the company annually out of the Consolidated Revenue Fund."

It is Canadian National's view that this amendment to the legislation will enable a concerted attack to be made on its passenger deficit and that the deficit can be eliminated by getting rid of those services which are uneconomic and not required in the public interest and at the same time providing for a means of payment in respect of those services which are required to be retained in the public interest.

The difficulties being met today by

Canadian National in attempting to get rid of uneconomic passenger services are referred to at page 18623 where Mr. Hart, replying to a question by Mr. Fournier, Q.C., explained the difficulties encountered in endeavouring to abandon the suburban service between Montreal and Vaudreuil, which took some six years to complete; also our efforts to abandon an uneconomic passenger service between Ottawa and Barry's Bay, which began in 1958 and is still before the Board of Transport Commissioners, hearings having been suspended pending the assessment of the results of a trial operation requested by the people of the area. Also mentioned was the recent case of a reduction in passenger service between Montreal and Hawkesbury, Ontario, which would have eliminated passenger service between Hawkesbury and St. Eustache. This case was heard in 1959, and despite possible savings of \$40,000 a year the application was denied by the Board even though a local bus operator appeared and gave evidence as to the sufficiency of his service and that he was prepared to carry the people being handled by the railway. Also mentioned were cases heard in the summer of 1960 dealing with the elimination of passenger train service between Fredericton and Fredericton Junction, N.B., and between New Glasgow and Oxford Junction, N.S. Both cases have now resulted in judgment favourable to the Railway but only after strenuous opposition by representatives of the various municipalities had been heard and considered by the Board for some months (p. 18625).

A more recent case was also referred to concerning train service between Montreal and Lac Remi, P.Q., reported in the Board's Judgment dated October 17,

1960 (16 J.O.R. & R., 296). In this case where the Railway Company had reduced its mid-week service, it was required to answer a complaint of the residents of the area that the remaining service was not suitable and adequate despite the fact that its loss on operations was \$82,500 in 1959 and the savings which reduced train service would bring about were of the amount of \$67,300 annually. The Board found at page 299 of the judgment:

"Although I am satisfied that the people living in the area between Morin Heights and Lac Remi were not adversely inconvenienced by the reduction of the train service during the summer months, I believe that after the bus service provided by the Provincial Transport Company is discontinued, the passenger train service offered by the railway will be inadequate to serve the needs of this population.

"It has been established that the railway is operating its passenger service at a loss on this railway line and its desire to improve its financial position is understandable. However, it is my view that the schedule of trains should be so arranged as to serve the people as adequately as possible in their need for passenger train service."

Further on, on page 299 of the judgment:

"Because of the lack of alternate service (except during the summer months) and the difficulty of keeping the roads open in winter time, I feel that the railway has the obligation to provide a service commensurate with the needs of the people living in this area.

"It is my suggestion that the Canadian National Railways should on or before October 29, 1960, rearrange its passenger train schedule on the Montfort Subdivision for the period during which no bus service is provided, north of Morin Heights, so as to have a passenger train during the week that will permit travelling from Lac Remi and intermediate points to Montreal and return on the same day. Should the railway not agree to this suggestion, this Board will consider issuing an Order reinstating the train service as it existed prior to June 22, during the period referred to above."

In the result, therefore, the Board's suggestion was accepted because it was cheaper for the railway to do this rather than have the old train service reinstated, even though the betterment in its annual position which it expected from its proposed curtailment in service was somewhat reduced.

Why must the railway be regarded as the only one with a responsibility to provide service? Even if this is so, why should it be required to do so at its own expense? Why should not the bus company, which has taken the railways' summer business away, be required to give service in the winter also, even if this means increased expense for the bus company or the provincial or local government in keeping the roads plowed out in winter time? This conception of responsibility must change and if the railway is to be called upon for standby or bad weather service it should be hired to provide it and be paid for work performed!

As your Commission is aware, it is Canadian National's view that the change in legislation we propose will alter the general environment in which these cases will be considered before the Board. A strong recommendation from your Commission will do much to educate the public that they will have to accept far less passenger train service in areas where alternate services are available even though such alternate services may not be as satisfactory or convenient, for the simple reason that it is of paramount importance to the people of Canada that the large passenger train service deficits on Canadian National be eliminated. It is our view that this can only be accomplished by vigorous action on our part taken pursuant to realistic legislation placed upon the statute

books following a recommendation from your Commission.

The Commission will remember that with the exception of the Province of Quebec no one appearing before you voiced any contrary opinion to that expressed by Canadian National on the general principle of the necessity of action being taken by way of legislation which would enable these passenger train deficits to be eliminated. In fact, witnesses for all the Western Provinces and the Maritime Provinces appearing before you have supported the proposition that uneconomic passenger services should be eliminated and that any such services which are required in the public interest should be maintained at the expense of others than the railway company.

In these circumstances we strongly urge your Commission to take clear and decisive action to deal with this large deficit area in Canadian National's operations and the greater good, not only of this Company, but of all people of Canada can be the only consequence of such action.

B. Uneconomic Branch Lines

Canadian National's position in respect of uneconomic branch lines is found in the transcript, pp. 18458-18467. In this part of its submission Canadian National has set forth the detail of what has been accomplished over the past years in its efforts to get rid of uneconomic branch lines. It has also told your Commission, (p. 18460) the action it is presently taking in reviewing such lines, thus continuing the process of obtaining as much relief as possible in this area. In dealing with this problem, as in the case of passenger

train services, our efforts meet strenuous opposition. To date only the most obvious cases have been dealt with before the Board. It is our view that here also a proper legislative foundation must be developed in order that a realistic approach to this problem may be had. We feel the suggestions which we have offered will enable such an approach to be made and at the same time fully protect such public interest as may be involved.

The nature of the opposition met by the railway when endeavouring to divest itself of uneconomic branch lines can be seen from the opposition met by Canadian National in the hearing of three applications in May of this year in Western Canada, namely, the Rapid City Subdivision, the Oakland Subdivision and the Wakopa Subdivision. In each case the railway's proposal was strongly opposed by the municipalities, the elevator companies concerned, Members of Parliament, members of the local Legislature and individual farmers who appeared by the dozen. Similar opposition has been met in nearly every case in recent years and in many instances has resulted in substantial delay in obtaining relief.

Mr. Hart was asked at page 18623 - "Could you tell the Commission how many applications of abandonment have been denied by the Board?" Since this question was asked the Board delivered judgments in two cases, namely, those involving the Rapid City and Wakopa Subdivisions.

The railway applied in 1959 to abandon its Rapid City Subdivision running for 75 miles from Hallboro to Beulah in Manitoba. This was the second attempt to abandon this line. The opposition was strong and vocal.

By its Judgment and Order dated December 2, 1960, the Board denied relief despite substantial losses in operations during recent years and a similar prospect for the future because it found the inconvenience to the farmers and grain companies outweighed the burden which continued operating loss would place upon the railway. If the line were abandoned farmers would have to haul their grain a greater distance to an elevator and the grain companies would lose the value of their buildings on the line. This is not denied but surely the rules are wrong. When the railway is in a substantial loss position with no better prospect for the future, it should not be required to perpetuate this loss because others, who are carrying on their business at a profit, would suffer some loss or hardship. The railway should be allowed to withdraw if it cannot make the line pay, with the proviso that if the line is needed in some public interest the railway should, in effect, be hired to provide it and should be reimbursed for losses sustained in keeping the line operating. This would place the burden and responsibility where it properly belongs.

The second case involved 80 miles in Southern Manitoba, known as the Wakopa Subdivision. The facts and evidence of hardship were similar to the Rapid City case, with the difference that the railway's annual betterment from abandonment was greater and the cost to farmers of longer hauls to alternate elevators lower than in the Rapid City case. By judgment, dated December 5, 1960, Order No. 103194, the Board granted partial relief only, directing that the Company retain 18 miles of line with no evidence to show it could expect to operate this portion profitably.

We do not suggest that those affected by an abandonment should not have ample opportunity to present their views. Nevertheless, it is felt that the time has come when all concerned should have before them a set of rules governing such matters which meet the needs and requirements of 1960. In particular, the railway should not be precluded from making substantial economies where alternate services are available even though they might prove to be less convenient or even more expensive than the rail service.

Those appearing before you, and particularly the western grain interests, have intimated that the railroads should not have general freedom to make any mass elimination of their branch lines. Our witnesses have told you that they are examining all our light density lines in order to see whether any of them should be considered candidates for abandonment, but they have also said that we have no intention of carrying out a wholesale abandonment of line programme. We are much more interested in approaching the problem in a realistic and rational fashion following discussions and consultations with all parties who may be affected. In fact, the evidence before you is to the effect that Canadian National's representatives are today proceeding with a general study in Western Canada, in company with the grain trade, the provinces and municipalities to see what can be done to revise the rail pattern in this area (pp. 18649-18658).

Canadian National's proposal for creating more favourable conditions within which to deal with branch line problems is entirely consistent with this approach. With the legislative change we have suggested, we would be able to proceed with the orderly abandonment of those lines which are uneconomic and not required in the public interest

and at the same time define those lines which are required to be retained in the public interest and be reimbursed for the loss incurred in maintaining them in being. This certainly would be in the interest of all concerned and fully protect any public interest involved and lead to an orderly approach to the whole problem over a reasonable period of time.

The suggested amendment to Section 168 of the Railway Act which would bring about this change and enable a rational approach to be made to the problem is set out at page 18479.

Some parties appearing before you expressed themselves in favour of delay in the implementation of an order authorizing a branch line abandonment, so as to provide time for those adversely affected to arrange their affairs. A general summary of the views of those appearing on the branch line problem and also the pronouncements of the Board on the usefulness of a delay period will be useful to your Commission.

The Province of Alberta did not make any specific proposals concerning branch lines, but witnesses appearing for the Province in presenting various briefs agreed that the railway should have maximum freedom to eliminate uneconomic branch lines and services. The witness for Alberta Wheat Pool agreed that we should have freedom to abandon uneconomic branch lines and expressed himself as being in favour of postponing the effective date of an abandonment to alleviate its impact (pp. 5874-6).

The Farmers' Union of Alberta agreed to the abandonment of uneconomic branch lines, retaining the elevators for storage purposes. They agreed that a subsidy should be paid to the railway if a line is kept in

the public interest (p. 5737).

The Province of British Columbia's brief, Part I, on page 46, outlines the Government's policy on this point to be practically the same as Canadian National's (p. 6938). The Vancouver Board of Trade also favours abandonment of unremunerative services (p. 6311).

While the Province of Saskatchewan does not mention this point in its submission, most of the farmer organizations from that Province suggested that when lines are abandoned a period of waiting should ensue before abandonment becomes effective (pp. 5290-2).

The Province of Manitoba stated its position at page 69 of its submission as follows:

"What we now suggest is that logic demands a similar approach to all deficit operations of the Railways. In short, those operations of the railways which result in deficits should either be abandoned or if they are found to be in the national interest, the deficits incurred in their continuance should be met by subsidy from the national treasury."

The Province further proposed a branch line trackage maintenance fund which would reimburse the railways for losses sustained in maintaining uneconomic trackage and at the same time reduce the revenues of the railway companies by a similar amount by means of reduction in non-competitive rates. The theory behind such a proposal is that the non-competitive rates today are artificially increased by the amount of deficits occasioned in branch line operations and in other operations. Canadian National does not agree with this hypothesis. Surely deficits of this type which are occurring on Canadian National are reimbursed from the pockets of the taxpayer since they become part of the general deficit of the Company in those years when deficits occur. Canadian National therefore is opposed to the

concept of a branch lines trackage maintenance fund.

Manitoba Pool Elevators' proposals are not inconsistent with those of Canadian National (pp. 4462-67 and pp. 4510-15), and neither are those of the Manitoba Farmers' Union (pp. 4848 and 4869). The Winnipeg Chamber of Commerce supports the Railway's proposals to abandon uneconomic lines and services (p. 4599).

United Grain Growers supported the general proposition that uneconomic lines should be eliminated but suggested that the Railway Act should contain a specific provision enforcing upon the Company a fixed period of delay in proceeding with abandonment of a branch line. Mr. Brownlee, Q.C., who appeared for this organization, suggested a delay of up to five years (p.14217).

Canadian National is opposed to any such period of delay in the implementation of a proposal to abandon a branch line which is uneconomic and not necessary in the public interest. It is, however, mindful of the fact that some inconvenience and loss may be occasioned to the parties concerned. However, a review of recent cases dealt with before the Board indicates that in most of them more than one year and in some cases more than two years' warning is given to those affected of the impending abandonment of a line. We would refer specifically to the Scotia Subdivision in Nova Scotia, abandoned by Order of the Board of Transport Commissioners, issued in March, 1955, where the principal industry concerned was notified of the Railway's intentions in February, 1953; the Connors Subdivision, New Brunswick, where an abandonment Order was issued in September, 1960, and principal shippers on the line were advised of the proposal by Railway officers in October, 1958; the Irondale Subdivision, Ontario, where

shippers were aware of the proposal substantially in advance of the filing of the application dated December, 1958 and abandonment was authorized not prior to April, 1960; the Locksley Subdivision, Ontario, when notice to the public preceded the filing of an application in December, 1959 and Judgment was given authorizing abandonment not earlier than April 1, 1961.

In a very recent case dealt with by the Board, being the abandonment of a portion of the Oakland Subdivision between Amaranth and Alonsa, Manitoba, the application was dated October 26, 1959, and Order of the Board No. 103027 issued on November 23, 1960, authorizing abandonment, stated as follows:

"The said abandonment shall not take place earlier than June 1, 1961, and on not less than ninety days' prior notice filed with the Board and posted in the stations on the said line for the information of the public."

In its Judgment in this case, dated November, 1960, the Board recognized the need for some delay:

"In order to facilitate the movement of the 1960 crop this abandonment will take place not earlier than June 1, 1961...."

In the Rapid City case the Board's Judgment, dated December 2, 1960, commented on the suggestion that the railways should be required to give five years' notice of its application to abandon.

"It is, of course, desirable that applications made to the Board should be based upon long range planning. The value of length of notice that an application will be made is doubtful."

Again in the Wakopa case this point came up and was dealt with in its Judgment, dated December 5, 1960;

"While it is not required by The Railway Act, I cannot agree that any longer notice of application for abandonment would serve any useful purpose. No assurance has been given that a serving of five years' notice would result in preparations being made for that day, and the inequity of requiring the Railway to postpone abandonment of a line which is operating at a loss for that period is most apparent to me. I might mention at this point that the application of 1940 for abandonment of most of this line, and the removal of agents subsequent to that date, did not seem to have served as a warning that the application might well be renewed."

In such circumstances it is Canadian National's contention that any statutory period of delay or any other method of providing delay as suggested by United Grain Growers or others is unwarranted and unnecessary in order to give a fair period of time to those affected by a line abandonment to adjust their facilities and affairs. At the same time any longer period of delay than now occurring would react seriously to the detriment of the Railway in its struggle to eliminate uneconomic services.

C. General Reorganization of
Canadian National Railways'
Plant and Facilities

The record of what has been accomplished in this regard in the past few years is set out in the transcript at pages 18431 to 18470. We have advised your Commission of the general efforts which have been made to achieve more efficient and economic transportation through dieselization; the use of faster and larger trains; increased use of modern technical equipment such as centralized traffic control, radio and mechanical data processing; the tremendous advances in mechanization of road maintenance forces, and the modernization of yards

and equipment. We have also told you of the advances being made in respect of merchandise and piggyback services.

Canadian National expects to attract much new traffic and to be able to handle it at less cost and provide better service to our customers through the development of its merchandise services. In addition to reorganizing the handling of small package goods by railway this service envisages the extended use of highway services in conjunction with rail operations.

It is respectfully suggested that the Commission should ensure that no obstacles are placed in the path of the railway which would hinder the development of its merchandise services. This is so because if Canadian National is not able to develop its collateral highway services along with the alterations being made in its rail services to produce a fast and efficient method of handling its small package, L.C.L. and express business, not only will it suffer in its inability to improve its net revenues but the public it serves will also be the poorer. We would respectfully urge that your Commission should do all in its power to encourage the development of this new method of handling traffic and support the proposals and plans now being put forward by the railway in this connection.

The same general request is made in respect of piggyback services. While this new type of service has developed rapidly on the railways in recent years, there is still a great future for its further development.

Evidence has been given to your Commission that in some provinces of Canada restrictions are today being placed upon the development of piggyback services. Also you have been told that such services should be

closely regulated because they might tend toward a rail monopoly (p. 20154). It is respectfully urged that such counsel should be promptly set aside on the grounds that the development of piggyback services can only bring greater benefit to the shippers of Canada; that its use is almost entirely found within the competitive area, and therefore, it is subject to the stern discipline of the market place; and that the railway's obligation under Section 315 of the Railway Act to provide suitable and adequate accommodation for the traffic offering protects the shipper, whether he be the ordinary shipper or a trucker shipping a trailer, from any possibility that the railway might act to his detriment once he has become committed to piggyback services in a large way.

Piggyback is a competitive tool and considered most desirable by the shippers of Canada as a means of moving freight. It is recommended that nothing be done which would limit the flexibility and usefulness of this competitive tool by way of circumscribing or regulating its use. The interests of the carriers involved and the competitive nature of the traffic itself will adequately control the use of such services, subject at all times to the over-riding jurisdiction of the Board under the present provisions of the Railway Act.

At page 18467 of the transcript, Canadian National points out that in the task of reorganizing its railway facilities much more needs to be done than the enactment of the legislation required to deal with the elimination of unnecessary branch lines and deficit producing passenger services. The time has arrived when the Railway must look at the whole of its operations and the

facilities which it offers to the public and endeavour to consolidate or eliminate many of its stations and other facilities throughout the country and to effect substitutions of more economic types of service, either by rail or by highway, for the conventional type of service it has offered in the past. Also, it is convinced that there must be a close integration and co-operation between its rail and highway services and between the services which it offers and those offered by any other highway carriers.

Your Commission has been told of a start along this line in Western Canada where a special team of Canadian National officers is studying the rail operations of the Company, with a view to seeing what changes or alterations can be made so that the shipping public may be better served and at the same time effect economies in operation. Talks have already been had with provincial government officials and officers of grain handling organizations as well as others and will proceed as quickly as possible in the hope of developing a realistic plan of reorganization of our facilities in Western Canada. It is Canadian National's view that your Commission should support and endorse and encourage such efforts on the part of Canadian National and that it should urge the public concerned to cooperate and support such endeavours in the long term interest of the area in which they live and of Canada as a whole.

You have been advised of the action which has been taken in the last ten years to eliminate unnecessary stations on Canadian National lines in Canada. While this has produced economies substantially over \$1,000,000 a year already, and the programme is proceeding,

nevertheless, Canadian National has had only approximately 75% success before the Board of Transport Commissioners in making these changes. Canadian National submits that more weight should be given to the savings which the Railway can achieve by eliminating stations and discontinuing agencies and less weight should be given to objections by municipal authorities based on local prestige.

Canadian National urges your Commission to deal with this general question of the need for action and planning in the immediate future, looking toward a greater consolidation of railway plant and facilities with a view to achieving economies in railway operation. It is respectfully suggested that this aim will be much more readily achieved if your Commission would by its report create a favourable climate for this work of re-organization and also urge upon the public, the railways, the labour organizations, and other interested parties, the necessity of cooperating and preparing and carrying out such plans of consolidation because they are in the interest of not only the general public of Canada but of the shipping public, who use these services as well. It is Canadian National's view that energetic action toward this end, supplementing its proposals for elimination of uneconomic services, will produce substantial benefits for all concerned.

D. Co-ordination of Rail-
Highway Services

Canadian National gave your Commission its views on road-rail integration and the need for co-ordination of these two services within the Canadian National's transportation enterprise because it is aware

of the objections taken by various segments of the trucking industry to its developing a stronger trucking arm. The matter has been fully aired before your Commission and certain conclusions can be drawn from the evidence placed before you.

A general statement of Canadian National's position in this matter is found at pages 18507-18509 of the transcript. In addition, full details of the acquisitions made by Canadian National in recent months were placed on the record following a request received from Counsel for the Province of Quebec (pp. 18669-18676). The evidence of the witnesses for the Company made it clear that Canadian National's entry into the trucking field is being undertaken with a view to supplementing its rail services by collateral trucking facilities. It proposes to operate short haul and long haul trucking operations in close co-operation with its rail services and where conditions indicate it will integrate its rail and highway operations in an effort to produce the most favourable overall transportation result in so far as its shippers are concerned.

Canadian National's objective is to develop a pattern of rail and highway services which will obtain both for itself and its customers the benefit of co-ordination of these two modes of transport (p. 18647). It plans to do this not only in the areas where it is competitive with Canadian Pacific but also in its local areas where it is providing the only rail service. It is the earnest opinion of the Company, following a detailed study of the problem, that there are many shippers in Canada who have expressed a desire for both rail and highway services and in some cases a combination of both,

and that in providing a complete transportation service it will enhance its competitive position with other transportation agencies and materially improve its net revenue position. At the same time, it will provide for shippers throughout each province of Canada today dependent solely on Canadian National for rail services the benefits which will flow from having available to them a fully rounded rail and highway service.

Those appearing before your Commission on behalf of the Provinces or provincial organizations did not take a view contrary to that of Canadian National and did not oppose the railway entry into the trucking business. They supported the general proposition that the railways must be able to meet competition where they find it. In this respect, note particularly the submission of the Province of Manitoba, at page 37, and the Winnipeg Chamber of Commerce (p. 4601), and also the Regina Chamber of Commerce (pp. 5421-22).

In Ontario, the St. Catharines Chamber of Commerce suggested the railway should be able to substitute trucking services where necessary and did not object to the railway entry into the trucking business unless, of course, problems of monopoly should arise which they did not consider as a problem at the moment (p. 10158).

Among those opposing the development by Canadian National of ancillary highway services was the Quebec Trucking Association, who objected on all grounds, and particularly the broad one that entry of the railways into the trucking business should be stopped and highway services left to be performed by truckers only (p. 7950).

The Canadian Trucking Association in its brief at Chapter 9, deals with this question and they warn that the railways will attempt to re-establish their old monopoly. The Association recommends stricter scrutiny of Canadian National's trucking enterprises and suggests that they should be restricted to those areas where private trucking firms are not providing the service proposed by the Railway (pp. 11299-11304 and 11551-11558). Another witness supported the Canadian Trucking Association, claiming that the railways might attempt to create a monopoly position if they are allowed to gain too large a share of the trucking business and that action should be taken to prevent further development of railway trucking services except in those areas where they would be substitutional for rail services or where established carriers were not providing a service (pp. 20159; 20220).

Both the Canadian Trucking Association and the witness in question agreed that truckers should have the right to object to the railways' competitive rates and agreed charges and that a limit should be put upon the volume of traffic that a railway might contract to carry under agreed charges.

Canadian National is strongly opposed to any one having the general right to object to the price of its services, except the users of those services. Certainly no competing carrier should have the right to complain. We have said that in the competitive area competition will protect the shipper and in the non-competitive area the Board should exercise its existing jurisdiction to ensure that rates are just and reasonable to both shippers and the railways. We see no reason

whatsoever why the trucker should have any right to protect his competitive position by objecting to the Railway's charges. The Board will act under Section 334 of the Railway Act if it suspects rates are not compensatory and the shipper, of course, can always object on the various grounds open to him under the legislation.

If the trucker is in an uneconomic operation and the lowering of railway charges will force him to forgo traffic and seek other goods to haul, then it is in the interest of the public of Canada that the low cost carrier should handle that business as long as it does not place a burden on any other traffic. Canadian National objects to any restrictive legislation such as that proposed by the truckers or any interference with its right to quote competitive rates to its shippers.

The truckers have entered the competitive field and built up a strong and vigorous trucking industry throughout Canada by competing with the established carriers and winning a large portion of the transportation market. Now, when the railways are struggling back to retain their existing traffic and expand their share of the transportation market and try to use their inherent advantages in this regard, the truckers come forward and ask for protection of their competitive position on the general ground that they fear a railway monopoly. Canadian National has no desire to drive the independent truckers out of business, but it has a duty to give services required by the shippers at rates which reflect the economic advantages available to it. Such action can only result in better service for the public at more reasonable rates.

On the question of entry of the railways into the trucking business, Canadian National says that

it has an inherent right, as a national transportation agency, to endeavour to provide those transportation services which shippers are demanding today. Canadian National's great transportation enterprise must move with the times and be prepared to meet the developing needs of the shipping public.

Canadian National also considers that it should be able to provide for the people in the areas which it serves exclusively a full transportation service either by rail or highway or a combination of both as the shippers there may ask for or require. Certainly shippers in areas served only by Canadian Pacific are, or will be, given this choice of service. We wish nothing less for the people of Canada that are served exclusively by Canadian National.

Canadian National seeks for itself only the freedom to compete with other highway services for business which the Canadian shipping public offers for carriage. We deplore any suggestion that any carrier should seek protection in the competitive field where its rates should not be lower than necessary to meet competition and should be compensatory, i.e., return variable cost plus some contribution to overhead. With these safeguards it should be left to the shipper to decide which mode of transportation he desires, depending upon price and service available to him.

In this connection the report of the Turgeon Royal Commission, at page 153, should be noted where the Commission concluded:

"It would seem that operation of trucks may be an essential and complementary part of railway operations, or especially in view of changing conditions. Under these circumstances it does not appear reasonable that railways should be prohibited from operating trucks or truck lines. There is no evidence to show that there is danger at present of the railways stifling competition by ownership of trucks. This would be a matter to be dealt with if and when the occasion arises."

It is submitted that no evidence has been brought before your Commission that there is any danger at present of the railways stifling competition by ownership of truck lines. The Canadian Trucking Association and also the Quebec Trucking Association have expressed fears that the railways might try to create monopoly conditions. In this connection, however, it should be remembered that the old railway monopoly stemmed from the fact that there was only one right-of-way and it was owned by the railway and was not available for any one else's use. Today the Queen's Highway extends practically throughout Canada and it is available for the use of any one who pays normal licence fees. With such conditions there cannot be a monopoly.

Highway services are available or potentially available as an alternate service to rail or rail and truck service. In fact it was said at page 20177 that "all freight is potentially competitive at the present time" and at page 20212 that there is actual competition today "over the greater part of the area, and over the very greater number of commodities". In addition, experience has shown that the flexibility of truck transport includes the ability to get in and out of the trucking business very quickly. Therefore, should one carrier obtain control of substantially all land transport

in a certain area and endeavour to act in a monopolistic way, i.e., increase rates substantially, competition by highway would spring up just as soon as it was economical for it to do so.

It will bear repeating to your Commission that Canadian National's objective in going into the trucking business is to broaden its transportation enterprise so as to be able to offer to its shippers a co-ordinated, planned transportation service and that it proposes to use rail or road or combinations of both in a manner most conducive to improving its net revenues and providing a better and more desirable service to its customers. It has no desire to drive the truckers off the roads. There is no desire to create monopoly conditions but on the contrary a clear intention to make itself fully competitive not only with the trucking industry and with private carriers, but also all other common carriers.

CHAPTER VI

WHETHER, AND TO WHAT EXTENT, THE RAILWAY ACT SHOULD SPECIFY WHAT ASSETS AND EARNINGS OF RAILWAY COMPANIES IN BUSINESSES AND INVESTMENTS OTHER THAN RAILWAYS SHOULD BE TAKEN INTO ACCOUNT IN ESTABLISHING FREIGHT RATES.

Canadian National's views on this subject are set out in the transcript at pages 18470 to 18476. Also shown there is the detail of Canadian National's non-rail assets as of December 31, 1959.

It is Canadian National's submission that the non-rail assets and non-rail earnings for its enterprise should not be taken into consideration at the time of establishing freight rates. The reasons supporting this view are given on page 18475 and show that as long as Canadian Pacific remains the yardstick in fixing rates Canadian National would be placed in a most unfair position if the Board were required to fix general rate levels taking into account Canadian Pacific's substantial other income, which Canadian National does not enjoy in like measure. It is Canadian National's view that the present legislation, namely, Section 387 of the Railway Act which prescribes a uniform classification and system of accounts for Canada's railways and the resultant general instructions issued by the Board directing the railways in the matter of segregation and reporting their rail operations and non-rail operations, deals with this matter adequately and sufficiently. There is no necessity, therefore, for the Railway Act to further define non-rail assets and earnings.

CHAPTER VII

OTHER RELATED MATTERS

A. Railway Legislation

The attention of your Commission is directed to Chapter VI of Canadian National's submission, commencing on page 18476 of the transcript, wherein it is recommended that a review of railway legislation be undertaken so that the whole concept of statutes governing railway operations will be brought up to date. Those matters which we consider it desirable to change or amend immediately have all been mentioned at other points in this argument except Section 53 (1) of the Railway Act dealing with appeals to the Governor General in Council. Your attention is again directed to this point and the argument given in support of Canadian National's recommendation that this section be amended so that the Governor in Council will have no power to vary or rescind an Order, decision or regulation of the Board which has been referred by way of appeal to the Supreme Court of Canada and judgment issued thereon by that Court (pp. 18477-78).

The necessity for this amendment is illustrated by the result of the recent attempt by the railways to charge demurrage on cars of grain held at terminal elevators for unloading. The Board found demurrage in respect of delays to these cars to be just and reasonable (77 C.R.T.C. 181). The grain interests appealed to the Supreme Court of Canada on questions of law arising from the Judgment of the Board, and that Court dismissed their appeal and affirmed the Board's Judgment that the railways were entitled to collect demurrage (77 C.R.T.C. 241).

Order-in-Council P.C. 1959-569, dated May 7, 1959, reciting the fact that further representations had been made by the grain interests, suspended the Board's Order authorizing the charging of demurrage.

It is Canadian National's submission that the Supreme Court of Canada should be the Court of last resort for all matters of law or jurisdiction arising under railway legislation just as it is the final court in the matter of the general law governing all Canadians.

Your attention is directed to the information given at pages 18502-18506 wherein it is indicated that various items in the Railway Act and other railway legislation which, while not perhaps requiring immediate revision, do not meet the needs of 1961. A detailed perusal of railway legislation would show that there are a great many more items outdated than those set forth by Canadian National, but it was considered that those referred to are sufficient to inform your Commission of the general situation. We submit most earnestly that your Commission should recommend that a thorough review and revision of all railway legislation be undertaken by the Department of Transport.

B. Canadian National-Canadian Pacific Act

Canadian National's views on the Canadian National-Canadian Pacific Act are set out at page 18509 of the transcript. You will note our view that substantial economies and improvements in service have been, and can be, obtained by the railways acting independently and in co-operation with each other without proceeding under this legislation. This has been the pattern of the

recent past and Canadian National believes it should continue, leaving the statute as it is for any future use which may be required of it.

C. Subsidies

It may be of use to the Commission to have a statement of Canadian National's views on subsidies. Both Canadian National and Canadian Pacific have represented to your Commission that a subsidy should be provided in respect of the movement of statutory grain to export positions supplementing the amounts collected from the farmers directly for the work done in handling this product. Canadian National has also suggested subsidies should be paid in other areas to reimburse the railways for work done where the service cannot stand on its own feet, such as in passenger services and branch lines.

Canadian National is not opposed to the payment of subsidies as a general proposition if that is the only way in which a particular problem can be dealt with. We are not in favour of any wholesale subsidization by Government, but we think it fair that our Company should be paid a reasonable remuneration for the work it performs. We think this to be true in respect of the handling of grain and we also think it is true in respect of the provision of uneconomic services which cannot support themselves and are required to be performed in some national or public interest.

We think that subsidies are best to be specific and related to a particular situation rather than general in nature. If this is done, all concerned will know what the money is being paid for and it will be possible

to review the situation periodically to see whether the factors upon which the subsidy was granted still obtain or whether some modification should be made.

It is also Canadian National's view that care should be taken in establishing subsidies to ensure that the Board, who would probably deal with such matters, should only direct such an arrangement to be made where it is satisfied that some service is required in the public interest. It should not become a means for retaining uneconomic services in being just because the parties or localities would like to see the service perpetuated.

Canadian National is fully convinced that the backbone of our Canadian transportation system is and must continue to be its railways, with their ability to provide low cost and efficient services for a great volume of goods. Believing this to be vital, Canadian National has sought and is still endeavouring to adapt its services to the changing circumstances and new competitive challenge facing it today. We hope in the future to obtain as large a share as possible of the transportation market and at the same time give our shippers full advantage, both in service and in price, of all techniques which may be developed in our continuing research for low cost efficient service by any available means.

Canadian National has not shrunk from taking calculated risks to achieve this goal, nor does it minimize the difficulties which lie ahead. We are confident of Canada's future as a nation and are sure that what we are

doing is in the broad public interest, as well as in our own interest as a business enterprise.

As we have already indicated, we cannot forget that all our efforts are overshadowed by the great unsolved problem of finding a fair and workable procedure under which labour and management can live, work and prosper in health and harmony. No prophecy or planning can overlook this situation, a solution to which is vital to Canada's future well-being and to the health of its railways.

If at any time during your deliberations you require any further information we will be very glad to supply it.

All of which is respectfully submitted,

A.D. McDONALD

J.W.G. MACDOUGALL.

Of Counsel,

CANADIAN NATIONAL RAILWAYS.

Montreal, Que.,
February 6, 1961.

THE ROYAL COMMISSION ON TRANSPORTATION

WRITTEN ARGUMENT SUBMITTED TO THE ROYAL COMMISSION
ON TRANSPORTATION BY FREDERICK R. HUME, ESQUIRE,
Q.C., COUNSEL FOR CANADIAN TRUCKING ASSOCIATIONS

Mr. Chairman and Gentlemen:

The task of resolving about five million words which were read into the record of this Commission during one hundred and thirty-three days of Public Hearings into a brief argument presents a formidable task. On the one hand, we might assume that there is nothing more that could or should be said to add to the mass of words now assembled on the record in the wide variety of submissions presented to the Commission and in the cross-examination and discussion of the witnesses who presented those submissions. You have sat through many many hours of public hearings and have spent many more hours in private session and in the study of the various submissions and proposals made to the Commission. As a written argument resembles a further brief, there is a temptation to merely point to the volumes of the transcript and the piles of exhibits as they contain all of the submissions and information which have been presented.

The second choice open to Counsel is to carefully review the submissions made and the evidence presented to the Commission which bears upon those submissions. Because there have been several million words read into the record and because the material is so massive, I think that there is a real responsibility on Counsel to present his argument summation as an assistance to the Commission so that all of the material which Counsel feels is relevant to his client's position is assembled and

condensed into the written argument.

In the sincere hope that a brief review of the position of Canadian Trucking Associations on behalf of the trucking industry in Canada and the evidence presented to this Commission relevant to that position will prove of assistance to the Commissioners, this written argument is presented to recall the position of the Trucking Industry in Canada in the role of transportation and as a review of the relevant evidence.

Realizing that it would be an imposition to inflict a long and detailed argument upon you and from my personal observation of the very careful way that you have followed the evidence over the last fifteen months of hearings, it is my hope that I may be of assistance to the Commission and at the same time discharge my duty to my client with a paucity of words.

INTEREST IN THE INQUIRY

There should not be any doubt in the minds of anyone as to the interest of the Canadian Trucking Industry in the deliberations of this Commission. I submit that the evidence makes it abundantly clear that not only is the Canadian Trucking Industry vitally interested in the recommendations of this Royal Commission but that the public of Canada is vitally concerned with the future of the Trucking Industry. It is difficult to remember many days of hearings (apart from those relating to the cost study) in which the Trucking Industry was not mentioned or referred to during the evidence-in-chief or cross-examination. Transportation is one of the most important factors in the life of Canada

and a Royal Commission studying transportation is unable to avoid the necessity of considering the broad transportation picture.

Order-in-Council P.C. 1959-577 issued on the 13th day of May 1959 appears on its face and in its preamble, to be concerned only with the problems relating to "railway" transportation in Canada. However, the wording of the Order-in-Council, which requires this Commission to inquire into and report upon the problems relating to railway transportation in Canada, also requires you to inquire into and report upon "the causes thereof" and to recommend solutions thereto. This is a broad injunction and the Order-in-Council provides that "without restricting the generality of the foregoing", the Commission shall consider and report upon four specific problems lettered (a) to (d). In the event that there still might linger any doubt as to the broad scope of the inquiry, paragraph lettered (e) requires the Commission to consider and report upon "such other related matters as the Commissioners consider pertinent or relevant to the specific or general scope of the inquiry".

I submit that the wording of this Order-in-Council is very much broader than P.C. 6033 under which the Turgeon Commission sat in 1949 and 1950. The broad scope of the inquiry brings with it a much greater task to the Commission and it is my respectful submission and my first main point that, in considering your recommendations and report with respect to "the problems relating to railway transportation in Canada", that you must take into consideration the effect of your recommendations upon all transportation agencies in Canada including the Trucking Industry.

Because of the realization that the report and the recommendations of this Commission would have a far-reaching effect with respect to all media of transportation, the Trucking Industry has taken a continuing, active part in the public deliberations of this Commission and has assisted the members of the Research Staff of the Commission who have approached Canadian Trucking Associations for information and assistance in connection with the studies being conducted by the Commission.

Canadian Trucking Associations, being a federation of provincial trucking associations and representing the Trucking Industry in Canada, is of the opinion that it is one of the "problems relating to railway transportation in Canada" and that the competition which the Trucking Industry presents to the railways is one of the causes of those problems. The broad effect that the recommendations of this Commission will have upon the Trucking Industry in Canada is considered to be a very serious matter by the Industry and has led the Industry, through the Canadian Trucking Associations, to prepare and present an extensive submission which commenced in Volume 58 and concluded in Volume 60 on May 2nd 1960. It will also be recalled that cross-examination of Mr. John Magee on that submission occupied a further five days and concluded in Volume 65.

It will be recalled that at the time of the submission of Canadian Trucking Associations, objection was taken by Counsel for the Canadian Pacific Railway that certain portions of the submission were beyond the jurisdiction of this Commission (see page 10750). The ruling

of the Commission appears at page 10918 and the wisdom of that ruling has become more and more manifest as many many briefs and much evidence contained references to and were concerned about the Canadian Trucking Industry.

The submissions of the Province of Quebec; Mr. J. Ferguson Browne, M.P.; The Canadian National Railways; the Province of Alberta; the Province of Saskatchewan; Dominion Steel & Coal Corporation; Maritime Transportation Commission; United Grain Growers Limited; the Province of British Columbia; North Western Ontario Development Association; Fort William and Port Arthur Chambers of Commerce; Canadian Federation of Agriculture; Canadian Manufacturers Association; Canadian Industrial Traffic League; the City of Saskatoon; the Farmers' Union of Alberta and many others have supplied this Commission with many points of view and many opinions relating to the future operation of the Trucking Industry in Canada.

It is respectfully submitted that the interest of the Trucking Industry cannot be ignored and that that industry will be vitally affected by the report and recommendations of this Commission.

A WORD ABOUT DEFINITIONS

A brief review of two or three of the terms contained in this argument (as well as in the submission of Canadian Trucking Associations) will assist in the better understanding of this argument and the position of the industry in Canada.

As I have explained above, Canadian Trucking Associations is an incorporation without share capital and is a federation of provincial

trucking associations representing every province in Canada. Canadian Trucking Associations, generally speaking, has no individual trucking members. The individual truck operators in Canada are members of their provincial associations and pay fees to that association. The provincial association in turn is a member of Canadian Trucking Associations and finances the operation of the Federal association.

The "Trucking Industry in Canada" is I think generally understood by this Commission. It is not comparable to any other transportation media in Canada. It is the small one truck operator with a restricted licence permitting him to carry milk to an urban centre. It is a medium size Class "D" or contract operator having a licence from a regulatory authority to haul the goods of certain named companies. It is the operator who is licensed only to carry heavy machinery on special float equipment. It is the operator with specialized stainless steel tank equipment who is licensed only to carry certain named chemicals. It is the medium sized truck operator carrying general freight between two given points over a given route. It is a large operator with modern up-to-date equipment and extensive licences permitting it to serve a great many areas and communities in a given province or provinces.

In short, it is a heterogeneous collection of small, medium sized and big companies running from an operator driving one truck to a company operating over one thousand vehicles. It is an industry that is affected by increased costs the same as the railways or any other industry. It is an industry that, in all of the Provinces of Canada, except Alberta, is restricted in its licence as to what it can carry

and where it can run. It is an industry that is in competition with the shipper who moves goods in his own vehicle; with other truck operators in his area; with the railways; with the steamships; with the air cargo shipments and with pipe lines. Except for trucking companies owned by the Canadian National Railway (which presumably could not go bankrupt), it must make a profit in order to survive. Its rates are regulated in some Provinces and in other Provinces competition is the regulator. It is an industry which defies exact definition but which is performing an essential public service from the Atlantic to the Pacific in Canada.

I should also like to say a word about the phrase "the public interest". Many times during the hearings, the question has been raised as to what is meant by the phrase "the public interest". It is my submission that this is a phrase that is not capable of precise definition. The law has many examples of phrases which defy precise and accurate delineation. Lawyers are accustomed to talk about the actions of "the reasonable man", yet no-where in the law of torts is "a reasonable man" defined. Similarly, the "public interest" defies precise definition. It was considered in the public interest to burn elderly women as witches in the New England States in the eighteenth century. It was considered in the public interest to hang felons in the public square during the eighteenth and nineteenth centuries. These spectacles are no longer considered to be in the public interest. In other words, public interest, like morals, varies from place to place and from time to time. Yet it is a phrase that, when used, has a valid meaning and is, in fact, employed in our legislation today. A glance at the Combines Investigation Act as

recently amended will produce several examples of the use of the phrase "the public interest" in describing whether a certain course of action is prohibited or is permitted. It may be in the public interest to expropriate a man's home for the purpose of building an airport. He may object violently to the expropriation and yet because it is in the public interest, the expropriation is justified. It is respectfully submitted that the phrase merely means that which is in the best interest of the general public at the present time. The recommendations to be made by this Royal Commission will be recommendations which the Commission believes are "in the public interest". The Commission will have no difficulty in arriving at an opinion as to what is in the public interest and what is not. It is respectfully submitted, therefore, that those who are charged with the administration of regulations or controls which are required to be exercised in the public interest are similarly able to interpret the phrase.

JURISDICTION

I wish to say a brief word about the question of jurisdiction in the event that any member of this Commission is not entirely clear on this matter. At the time of the Turgeon Commission Report in 1951 it was generally believed that the jurisdiction over the entire Trucking Industry in Canada was vested in Provincial Governments. There had been some public reference before a Committee of the Senate in 1930, when an amendment of the Transport Act was being considered in Committee, that the Federal Government had jurisdiction over international and inter-provincial trucking but the matter had never been settled and no constitutional

reference had ever been made to the Courts to determine the question. The Turgeon Commission appeared to consider that the problems of truck transportation were not entirely within its terms of reference and stated at page 265:

"The scope of this inquiry is limited, as of course it had to be, to 'all questions of economic policy in the jurisdiction of Parliament'. The subject of this chapter is motor traffic which, in the main, is a purely Provincial jurisdiction."

The Turgeon Commission, however, was aware of the possibility that the proper interpretation of the British North America Act vested control of international and inter-provincial truck operation to the Federal Parliament as they stated on the same page:

"A portion of the traffic, relatively small but of sufficient importance to have become in itself a problem for the railways, is inter-provincial and international and therefore possibly within the competence of Federal Legislation (although this Commission does not pretend to express any opinion on the legal questions that may arise concerning this)."

The question which the Turgeon Commission raised in its report in 1951 was not long in being settled. The Judgment of the Judicial Committee of the Privy Council, which was delivered in London on the 22nd of February 1954 in the case of The Attorney General for Ontario and others vs Israel Winner and others, was one of the last Judgments of the Judicial Committee of the Privy Council in a Canadian appeal and was the last constitutional law reference to that Committee.

The decision had far reaching effects with respect to the Trucking Industry. The Judicial Committee of the Privy Council followed

the unanimous Judgment of the Supreme Court of Canada issued by nine Judges sitting as a full Court, and the Reasons for Judgment delivered by Lord Porter speak for themselves.

At the time that the submission of Canadian Trucking Associations was presented to this Commission in May of 1960, the Motor Vehicle Transport Act (Chapter 9, 1954 Statutes of Canada) had not been proclaimed in the Provinces of Quebec and Newfoundland and it was the submission of Canadian Trucking Associations that this unsatisfactory situation should receive the attention of the Commission as the Quebec Transportation Board was regulating international and inter-provincial trucking without proper authority. It will be recalled that at the presentation of the Quebec submission on January 5th 1961 it was announced that the Province of Quebec had agreed to the proclamation of the Federal Statute in that Province. The Act has now been proclaimed by the Governor in Council in all Provinces of Canada except the Province of Newfoundland which has not, as yet, experienced a large-scale development of international or inter-provincial trucking.

A part, therefore, of what was stated to be a confusing and unsatisfactory condition has been corrected by the proclamation of the Federal Act in Quebec and a portion of the difficulties about which Canadian Trucking Associations complained in May of 1960 has now been corrected. It is submitted, however, that the Motor Vehicle Transport Act is most unsatisfactory and more will be said about that matter at a later time in this argument.

Truck operations that are clearly intra-provincial are under Provincial regulation and control. Truck operations that are international or inter-provincial are under Federal control. In 1952 the Turgeon

Commission referred to this traffic as "relatively small but of sufficient importance to have become in itself a problem for the railways". It will be clear from the evidence presented to this Commission that this traffic is no longer relatively small and is undoubtedly one of the problems of railway transportation in Canada. Examples of this sort of traffic appear throughout the transcript - granite moves from St. Cloud, Minnesota to Saskatoon a distance of seven hundred and ninety-two miles (p. 196) - fish moves from the Maritimes to Central and Western Canada:

P.825 - (Mr. R.F. Johnson: Nova Scotia Fish Packers Association)

"The principal means of getting our fish to these Central and Western Canadian and U.S.A. markets are rail, freight, express and motor trucks. Increasing use is being made of refrigerated motor trucks because of the advantages they offer over rail cars in the matter of cost, convenience and speed".

Trucks compete between Vancouver to Montreal and Halifax (p. 3085) - fruit moves from British Columbia to Central Canada a distance of fifteen hundred miles (p. 6685) - livestock moves from Western Canada to Ontario at a higher rate than the railway but arrives in Ontario in a better condition with far less shrinkage:

P.7670 - (W.A. Price - Livestock Industry of Ontario)

Q: "This would be from where to Toronto?"

A: "Calgary and Winnipeg."

A: "There is one operator fully established on the basis of moving two rail cars per week.

The receivers that have been receiving the cattle tell me that these cattle come in by truck in much better shape than by rail".

and granite moves from Quebec points to Ontario points a distance up to eight hundred miles. (p. 9510)

The above are a few examples of long hauls of an inter-provincial nature and there was also additional evidence indicating a regular trucking service between Vancouver and Prairie Cities to Central Canada and in some cases on to the Maritimes. It is expected that the construction of the Trans-Canada Highways (which incidentally was not built to assist the Trucking Industry but for military and strategic reasons as well as linking the East and West in Canada by an all Canadian road) will serve to increase the amount of international and inter-provincial traffic which is under the jurisdiction of the Parliament of Canada.

Canadian Trucking Associations submits that the British North America Act be amended to allot the jurisdiction over the intra-provincial component of an extra-provincial undertaking to the Provinces. The Winner Case held this part of a truck operation is not divisible and is under Federal jurisdiction.

AGREED CHARGES

Dealing briefly with the various subject matters that have occupied part of the time and attention of this Commission with respect to those matters which affect the Trucking Industry, I wish now to refer to the matter of agreed charges. Agreed charges are a device borrowed from the United Kingdom and are not permitted in the United States of America.

P.11968 - (W. J. Stenason - Canadian Pacific Railways)

"In the United States the restrictions are much more severe than they are in Canada; there are no agreed charges and so forth."

An agreed charge is more than a rate agreed upon by a carrier for the transportation of the goods of the shipper because one of its terms ties a percentage volume of traffic to the carrier by the contract. The volume is expressed in percentages and the weight of the goods carried under any individual agreed charge contract depends upon the total volume of goods which are shipped by a particular shipper. There are usually carload minima in the agreement but the shipper is not obliged to ship any given weight but merely a set percentage.

First introduced in 1938, the agreed charge system of rate making received considerable attention from the Turgeon Commission, who devoted approximately eight pages of its report to this subject. It was introduced at a time when the Federal Government was not exercising any control or regulation over the Trucking Industry in Canada and it was introduced in order to enable the railways to meet what was regarded as "the unregulated competition of trucks (see Turgeon Commission Report page 95)".

The Turgeon Commission indicated that the agreed charge principle had not had a fair trial and, notwithstanding objections to the practice, it set out its conclusions on page 95 and in doing so rejected the amendments proposed by several of the Provinces and by the railways. Between the years 1951 and 1955 it was alleged by the Government of the Province of Alberta that the effect of agreed charges was to eliminate the one-and-one-third rule which had been recommended by the Turgeon

Commission and which had been implemented by Parliament. As a result of complaints a special inquiry was held into agreed charges in 1955. Canadian Trucking Associations, on behalf of the Trucking Industry, vigorously opposed the principle of agreed charges before that Commission and after due inquiry the report indicated that it was not prepared to recommend any restriction of the right to make agreed charges and, in fact, recommendations were made to extend and simplify the procedure with respect to making these agreed charges.

Canadian Trucking Associations, on behalf of the Trucking Industry of Canada, continues to oppose the principle of agreed charges. Evidence to this Commission has indicated that they are a much more important factor in the transportation market at the present time than they were in 1951 and in 1955. It is submitted that this justifies a fresh look at the question of agreed charges -- particularly in view of the many suggestions made to this Commission that subsidies be used to assist the revenue position of the railroads. It is further submitted that without proper safeguards the agreed charge can develop into a potent monopolistic weapon by which competition by trucking operators can be weakened and eliminated if agreed charges continue to grow at the same percentage rate in the future.

The growth of the Trucking Industry in Canada has had very great advantages to the shippers in Canada. Truck rates have held down rail rates:

P. 240 - (Brief of New Brunswick)

"Competitive hold-downs of transportation costs

in Central Canada have aggravated this situation".

and the impact of truck competition is not confined to Central Canada:

P.1853 - (C.D. Edsforth - Canadian Pacific Railways)

Q: "Would you say that the impact of these competitive rates and agreed charges on the whole freight rate feature is principally centred in Central Canada or is there a similar impact in Western Canada and the Maritimes?"

A: "It is pretty well distributed all across Canada, Mr. Hume".

In the Maritimes, where truck competition has not increased at the same rate as in other parts of Canada, it is considered by the Maritime Governments that lack of truck competition has been detrimental to Maritime shippers:

P.14591 (C.F. Dickson - Maritime Transportation Commission)

Q: "This lack of motor carrier competition in the Maritimes has been detrimental to the Maritime shipper?"

A: "The less intense competition has not given the quality of competitive rate reductions that there are in other parts of Canada".

It was conceded that if there were greater competition in the Maritimes, shippers would be better off. (p.14595-6)

It is therefore ironic that one of the competitive advantages that the shippers of Canada have received is at the same time one of the "problems relating to railway transportation in Canada". As the Trucking Industry has become more competitive to the railways, the railways have been forced to institute rates lower than normal in order to meet the competition.

Another way to state the same problem is that when the railways needed additional revenue they were not able to recover the additional revenue allowed by the Board of Transport Commissioners for Canada in the area of competitive rates. The shipper has, therefore, paid lower rates than if the competition did not exist. Competitive rates are permitted to the railways and notwithstanding some evidence to this Commission that the competitive rate procedure required to be streamlined, it was admitted on cross-examination that competitive rates can be instituted with little delay and that the provisions in the Legislation requiring the railways to establish that the rates are compensatory has only been used less than twelve times out of tens of thousands of competitive rates in existence:

P.19770 - (A. H.Hart, C.N.R., cross-examined by F.R.Hume, Q.C.)

Q: "Out of the tens of thousands of competitive rates in the book how many times have you been bothered by having to go through a procedure before the rates become effective?"

A: "Not frequently. The Board of Transport Commissioners has not used the power in Section 334 to any extent at all. Actually I think it's less than a dozen times. I am certain of that and it may be considerably less."

Q: "Less than a dozen times out of several tens of thousands?"

A: "Out of a great number".

It is respectfully submitted that the competitive rate procedure allowed to the railways gives them complete and absolute freedom in meeting truck competition. The only restriction upon the railways is that the rates must be compensatory - but then so must the truck rates be compensatory

because the trucker has not got the financial resources of the Canadian Pacific Railway or the backing of the people of Canada as in the case of the Canadian National Railway to withstand losses and would go bankrupt.

If the truckers' costs for any given movement (and I mean by this his true costs) are less than the railways' then the shipper will get the advantage of the lower truck rate in the ordinary free play of competition. The trucker, however, must stand on his own feet. At the end of the year he must have enough money coming in from his operations to pay his expenses, otherwise he will go out of business. He is in competition with other truckers and with private industry and his rates must be compensatory. He operates generally in a very small area and he has not got the opportunity of cross-subsidization. It is therefore not necessary to legislate with respect to a truck operator to provide that his rates must be compensatory because, being private enterprise, his rates must be compensatory if he wishes to keep going. Parliament on the other hand has decided that it is necessary to legislate in order that the particular competitive rate of a railway be compensatory and it is no doubt due to the economic strength of the railways and the temptation that would be present to quote a non-compensatory rate in a certain area in order to drive out a competitor.

The same economic strength that makes it necessary to safeguard competitive rates by Statute will also have an effect upon agreed charges. The trucker cannot make an agreed charge in the same sense as provided in the Transport Act. In the Province of Quebec there are about five hundred contract operators and of all of those operators there are only two agreed

charges in the technical sense in existence:

P.20843 - (J.J. Harold - witness:Province of Quebec and
Chairman, Quebec Transportation Board)

"Up to the present we have allowed two agreed
charges between Montreal and Quebec".

There are contract carriers in the Trucking Industry who have a contract rate with a shipper but the difference between such a contract and an agreed charge is that the agreed charge contains the provision binding traffic to the carrier and removing it from competition over long periods of time. Should railway agreed charges force the largest truck operators to follow suit with agreed charges of their own -- and as in the case of the two truck agreed charges between Montreal and Quebec, it is only the largest truck operators who have the financial resources to enter into agreed charges -- the competitive squeeze on the smaller truck operators will reach serious proportions and may gravely prejudice the financial position of this important segment of the Trucking Industry.

The Province of Quebec in its submission indicated that it favours returning agreed charges to the control of the Board of Transport Commissioners for Canada:

P.20819/20 - (J.J. Harold - Province of Quebec)

Q: "And I understand you are suggesting that there should be some kind of control by the Board of Transport Commissioners with respect to rail agreed charges?"

A: "Right".

and it is respectfully submitted that this Commission should make recommendations to ensure that the agreed charge method of rate making will not be used for the purpose of eliminating truck competition. The

Combines Investigation Act (with respect to amendments that received Royal Assent on the 10th of August 1960) now provides that a manufacturer or a dealer cannot charge such a low rate in one area of the country or to one group of customers so as to have the effect of or be likely to eliminate a competitor. It is repugnant that one manufacturer or dealer with large economic strength should be able to sell his goods at such a low price in a certain area as to eliminate a competitor in that area. This principle of law has been in the Criminal Code since 1935 and was enacted by the Parliament of Canada as a result of the recommendations of the Stevens Price Spread Commission. In order to safeguard the Trucking Industry the Government of Canada has instituted a right of appeal to the Governor-in-Council following the Royal Commission Report of 1955.

This appeal to the Governor-in-Council, while appearing to be a satisfactory remedy on its face, is nevertheless virtually useless for a great many of the small truck operators across Canada. You can well imagine how enthusiastic a small truck operator in the Province of Saskatchewan would feel about instituting an appeal to the Governor-in-Council in Ottawa with respect to a particular agreed charge. This procedure has been used only once and there is little wonder. Litigation is expensive and appeals to the Governor-in-Council are equally so.

It has therefore been recommended by Canadian Trucking Associations and, I submit, supported by the Province of Quebec:

P.20887/8 - (J.J. Harold, Province of Quebec)

A: "Pardon me, Mr. Sinclair, I am not asking for any special privilege of the trucking fraternity, but as you know we do allow the railways to come before our Board. Our Act permits it, and I

think similar legislation should be applicable in the Federal Act (Transport Act) as well as in the Provincial Acts".

that your Commission might consider making recommendations to improve this appeal procedure by granting a right of appeal for a competing carrier not to the Governor-in-Council but to the Minister of Transport for the purpose of having the appeal referred to the Board of Transport Commissioners for Canada for investigation. If the Minister is of the opinion that it is in the public interest that this should be done or if there is prima facie evidence that the rate is non-compensatory, such a right of appeal would act as a strong safeguard against abuses of the agreed charge method of rate making and Canadian Trucking Associations have suggested an amendment to Section 6 of The Transport Act to accomplish this purpose, which amendment is respectfully urged upon the Commission.

A further amendment is suggested in order to provide that no more than 50% of a shipper's freight can be tied by an agreed charge contract to the railways. I emphasize that this is not to suggest that a shipper may not voluntarily grant 100% of his freight to the railroad - it merely permits competitive means of transportation to at least bid for and attempt to secure the remaining 50% during the life of the agreed charge contract. If the shipper prefers to ship by rail, he will, of course, give all his shipments to the railways. Many shippers are forced to join in agreed charge contracts in order to retain competitive positions in distant markets. The second amendment suggested by Canadian Trucking Associations would have the advantage of permitting a truck operator to quote a rate and possibly secure, on a basis of service,

flexibility, or otherwise, a portion of the trade which would not be tied by contract to the railway. This would, it is submitted, materially assist in the preservation of the potential competition of the trucking industry. In the United States of America agreed charges are not permitted for the simple reason that the authorities will not permit one transportation media to employ a device that unjustly discriminates against any other. There are contract carriers in the United States just as there are contract carriers in Canada but those contracts, while providing for a special rate, do not permit a truck operator in the United States to tie up a percentage of freight to the detriment of the railways or preclude the right of the railways to bid for this competition. Similarly the railways are not permitted an agreed charge for the same reason.

It was the view of the Farmers' Union of Alberta that the agreed charges have led to a worsening of the railway's position. (p.5731-2) The lack of a large volume of inter-provincial trucking between Western Canada and Central Canada is due to trans-continental agreed charges (p.13678 cross-examination of Professor William Hughes of the Province of British Columbia).

The suggested amendment to restrict the percentage to 50%, matched by a corresponding provision in the suggested Highway Legislation, should be recommended to the Government.

COMPETITIVE RATES

I have dealt with the subject of competitive rates in discussing agreed charges which are, of course, a form of competitive rate. Canadian Trucking Associations does not deny the right of competing

carriers to make competitive rates. Truck competition has helped to keep the general level of railway rates lower and has been an important factor in improving the service and efficiency of the railways. Similarly, improvements in railway service and efficiency have an effect on the increased improvement and efficiency of the Trucking Industry. It follows that any action which potentially and actually endangers the existence of this competition should be prevented and controlled. The railways are free to make competitive rates subject to the provisions of Section 334 which provides that the rates must be compensatory and they must not be lower than necessary to meet competition. This so called "shackle" was placed in the Railway Act long before the real impact of truck competition and it was apparently necessary in order to ensure that they would not institute competitive rates that were in themselves a loss or would be lower than absolutely necessary in order to safeguard the revenue position of the railways.

It must be clear that Parliament, when it passed Section 334, had in mind that the railways might regain their monopolistic position if they were free to institute competitive rates that would not meet this qualification. The Canadian National Railway cannot go bankrupt. Its overall losses are met by the tax-payers of Canada. The Canadian Pacific Railway could theoretically go bankrupt but would not be permitted to do so. That railway has a great many other assets and earnings outside the railway category which assist it in maintaining its financial position.

And so because of the size and economic strength of the railways this legislative restriction was placed in the Statute not - I repeat

- at the request of the Trucking Industry. Before the Turgeon Commission, the railways had much to say about the fact that they were regulated or shackled and their truck competitors were not. The evidence before that Commission clearly demonstrated that this was mere propaganda and that the railways were substantially in the same position as the Trucking Industry in quoting competitive rates and in an even better position in Provinces like Quebec and Saskatchewan where truck rates are regulated and cannot be lowered without the permission of the regulatory authority.

Certain persons have the right to appeal under the Railway Act with respect to the matter of competitive rates but the Trucking Industry's right to appeal was excluded at a time when the Trucking Industry was not considered to be under the jurisdiction of the Parliament of Canada. Today an important segment of the Trucking Industry is under the jurisdiction of the Parliament of Canada and the Trucking Industry is vitally interested in the matter of railway competitive rates.

Canadian Trucking Associations, on the expectation that this Commission will have important recommendations to make with respect to the control and regulation of the Trucking Industry in Canada, recommends that the Railway Act be amended to permit an association of motor vehicle operators to join others entitled to apply to the Board of Transport Commissioners on behalf of a motor vehicle operator for an order disallowing a competitive rate. The trucking associations in Canada are responsible trade associations and the suggestion of Canadian Trucking Associations to permit the appeal to be made by an association and not by individual truck operators will ensure a proper employment of this privilege. The

Trucking Industry feels that it is absolutely necessary that it have this right of appeal in order to protect it against the imposition of non-compensatory competitive rates which would have the effect of eliminating competition and reinstating the monopolistic position in any given area in Canada. Being under the jurisdiction of the Parliament of Canada with respect to an important segment of its industry, the Trucking Industry associations should have the same right of appeal in questioning a competitive rate as those now given that privilege. As was pointed out in the cross-examination of the Quebec brief, Provincial Boards permit the railways to appear before them in matters of trucking rates and the Trucking Industry should have the same privilege of appearing before the Board of Transport Commissioners for Canada.

P.20887 - (J. J. Harold - Province of Quebec)

"I am not asking for any special privilege of the trucking fraternity, but as you know we do allow the railways to come before our Board. Our Act permits it and I think similar legislation should be in the Federal Act as well as in the Provincial Acts."

PIGGYBACK

I should now like to direct a few remarks on the important question of piggyback. At page 816 of the transcript and during the sittings in Halifax, the Chairman stated:

"I think it would be more helpful to the Commission if the Canadian Trucking Associations would make some definite announcement on the principle of piggyback. Are they for it or are they against it? Do they want it or do they not? I think that would be most helpful to us. But that can wait for Ottawa."

In view of the interest of the Commission on this important subject, Canadian Trucking Associations carefully canvassed its Provincial affiliates in order to obtain the views of the Trucking Industry in Canada on this subject.

The idea of piggyback service has a great appeal to those who sincerely hope for greater co-operation between the railways and the Trucking Industry in Canada. At the time of the Turgeon Royal Commission, Canadian Trucking Associations introduced photographic evidence showing piggyback service in the United States prior to 1949 and witnesses from both railways were asked on cross-examination whether they had any plans to implement this service in Canada. The record of that Commission will show that both the witness for the Canadian Pacific Railway and the witness for the Canadian National Railways stated that they had no intention of using their economic strength to assist their competitors and had no plans to institute piggyback service outside of the possibility of moving their own vehicles on their own flat cars.

Notwithstanding this statement both railways have now made Plan Number 1 Piggyback available on a somewhat restricted scale in Canada. The railways first instituted Plan Number 2 Piggyback under which they transported trailers owned by themselves in the early 1950's and later extended the service to include Plan Number 1 Piggyback under which they transport trailers owned by truck operators. There are certain noticeable gaps in Canada, however, and a prime example is in the Maritimes where the Canadian National Railways refused to extend Plan Number 1 Piggyback service. The evidence of Mr. A. H. Hart for the Canadian

National Railways is interesting in this connection.

P.19778 -

Q: "Am I misinformed that you do not extend Plan 1 to all the trucking industry in the Maritimes?"

A: "No, Plan 1 is not in the Maritimes as far as we are concerned."

Q: "Oh, it is Plan 2?"

A: "You are talking about Plan 2 in the second paragraph where it is in the Maritimes."

Q: "You have Plan 1, that is you carry the trailers of independent truckers in certain parts of Canada but not in the Maritimes?"

A: "Not in the Maritimes."

Q: "Is there any reason for it?"

A: "We have had no requests from shippers."

Q: "Have you had requests from the Trucking Industry in the Maritimes?"

A: "Yes."

Q: "Surely the truck operator is the shipper in the case of Plan 1."

A: "Yes, but he is the man who puts the trailer on and as between us and the customer he is the customer but he is the middleman."

I suggest that the real reason why the Canadian National Railways does not wish to extend Plan 1 Piggyback service in the Maritimes is that they would be forced to extend the service to the vehicles of Smith Transport owned by the Canadian Pacific Railway into areas of the Maritimes which the Canadian Pacific does not now serve.

To state the matter frankly, the opinions received by Canadian

Trucking Associations indicated that the truck operators were not all of the same opinion with respect to piggyback service. The evidence then presented by Canadian Trucking Associations and others indicates that there are certain dangers to the Trucking Industry inherent in the growth of piggyback service unless it is properly controlled. The dangers to which I refer are spelled out in the submission of the Province of Quebec appearing at pages 20679/80. It is feared by some that an extension of the piggyback service will result in truck operators depleting their staff of highway drivers and come to depend upon the continued service of the railways. These highway drivers are skilled specialists. It is not possible for everyone, merely because they hold a vehicle operator's licence, to properly operate and handle a large tractor-trailer combination unit on the highway. Having depleted its driver force, a truck operator may find himself in difficulty if, for example, the railways raise the rate for piggyback service to a point that would make truck operations non-competitive or in the event of a railway strike or other cessation of service.

It is submitted by Canadian Trucking Associations that, because this is a relatively recent development in the transportation of goods, it should be carefully studied. Controls which might be recommended are a mixture of railway legislation and highway legislation. As railway legislation such controls are clearly under the jurisdiction of the Parliament of Canada. With respect to a purely intra-provincial truck operation or an intra-provincial piggyback movement, this may also be under provincial control so there is a possible conflict of jurisdiction.

At the present time the railways have stated that they are only carrying the trailers of licensed highway operators. However, railways are required to accept freight - including piggyback trailers - from any person offering goods for transport. Unlicensed truckers might use piggyback services to move trailer loads of goods from one city to another completely free of regulatory control unless the present regulations with respect to piggyback are amended. It is therefore recommended that the matter receive further study and that controls and regulations should only be instituted as a result of that study which would include consideration of safeguards so that the stability of the conditions under which the service is offered would be ensured; that the interests of both the railways and the highway operators would be protected and safeguarded and that any regulations and controls would be administered by a group fully conversant with the problems of both railways and highway transportation industries. If any regulations are to be recommended by this Commission it is submitted that the Trucking Industry should be fully consulted with respect to these regulations. Piggyback service represents a step forward in the area of co-operation between competing media of transportation and if properly regulated cannot help but bring benefits to the people of Canada.

Counsel for the Canadian Pacific Railway raised the question with respect to freight forwarders during cross-examination. It is respectfully submitted that this creates no problem. At the present time freight forwarders who wish to ship goods over the highways for compensation must be licensed as a highway carrier. If they wish to ship goods

for compensation via the railways, they are free to do so. The type of control suggested by Canadian Trucking Associations would not create any additional problem for the freight forwarders. If they propose to move goods over the highways, they would be required to hold a Federal or a Provincial highway licence (as the case may be). If they wish to use highway vehicles and railway piggyback service, they would require a highway licence if they were, in fact, using the highways. In all of the Provinces, the highways are defined in such a manner as to include urban streets and a tractor-trailer operated within a municipality is still operating on the highway. Some of the Provinces, like Ontario, exclude from the operation of its Public Commercial Vehicle Act any vehicle that is exclusively confined to an urban area and to a distance of three miles therefrom. Other Provinces have no such exclusion. Freight forwarders would be in no worse position under the controls as suggested than they are at the present time and the draft Highway Act submitted by Canadian Trucking Associations would not interfere with their railway operations whatsoever.

It is fully recognized by Canadian Trucking Associations that piggyback service will increase and it is the one area in which competing media of transportation can extend their co-operation. It is, as I have stated, no secret that the truck operators in Canada and those who speak for them are not unanimous with respect to this matter. Some operators view piggyback service with great favour and are using it extensively. Other operators view it with extreme suspicion.

It is respectfully submitted that this is an area of development which should receive special study in order to ensure that the regulations to be formulated would not work to the disadvantage of either the railways, the Trucking Industry of Canada, or the people of Canada.

RAILWAY ENTRY INTO THE TRUCKING BUSINESS

I should now like to turn to and make some brief remarks about railway entry into the highway transport business. The extent of this entry and the particulars of the trucking arm of the railways is before the Royal Commission. The evidence before the Commission, however, is only part of the story as it would be necessary to study and review the individual highway licence of each company owned or controlled by the railways in order to determine the full extent of highway freight service operated by the railways. It cannot be assumed, because the railway purchases a trucking concern, that they are automatically operating a general freight service all over the area in which the company is located. The individual licence restrictions would have to be examined.

The policy of Canadian Trucking Associations has been to oppose the acquisition of highway licences and carriers by the railways. This policy was expressed to the Turgeon Commission in 1950. That Commission, at page 153 of its report, indicated that they did not consider it reasonable that the railways should be prohibited from operating trucks or truck lines and that there was no evidence to show that there is a danger at present of the railways stifling competition by the ownership of trucks. That Commission concluded its recommendations with the following statement:

"This would be a matter to be dealt with if and when the occasion arises".

A careful review of all the evidence presented to this Royal Commission indicates that there is still no evidence that at the present time independent truck lines remaining in existence are being stifled by railway ownership of truck lines. It is, however, the considered opinion of Canadian Trucking Associations that the continuing acquisition of trucking firms by railways is not in the public interest and should be stopped. This is also the view of the Province of Quebec. That Province believes that the trucking arm of railway operation should not go beyond pick-up and delivery service in Metropolitan centres and major urban cities (p. 20672).

There has been evidence tendered to the Commission by Canadians that the railways should be permitted to abandon unprofitable lines and substitute trucks. It is submitted that the analysis of this evidence supports the view that such approval as there is for railway truck operations generally goes no further than a belief that the railway truck operations should be complementary to the rail operation and should not be permitted to substitute for railway service indiscriminately. A review of the situation today indicates that this is not what has taken place.

Canadian Pacific Railway now owns truck lines that link the Maritimes with British Columbia. Their trans-continental operations parallel their railway operations. They are not using their truck lines to substitute for unprofitable railway branch lines nor as a mere complementary service. The freight solicitors of the Canadian Pacific Railway are calling upon the same shippers and competing with the freight solicitors of Smith Transport Ltd. (p.18766) Part of the fear of the Trucking Industry arises from the fact that while it might be economically impossible for the railway companies to purchase all or even a substantial

portion of the independent truck operators in Canada, the railways can, because of their economic strength, cause a serious effect upon the independent truck operators in any given area by their operation of one trucking concern.

In Provinces like the Province of Ontario, where there is no rate regulation, if you have five independent truck operators competing between points A and B and one of those five operators is owned by a railway, it is possible for the railway-owned truck firm to so reduce its rate that it might put the other four independent operators out of business. The railway-owned truck operator is not likely to go bankrupt because it has behind it, in the case of the Canadian Pacific Railway, the vast financial resources of that company, and, in the case of the Canadian National Railway, the taxpayers of Canada.

Canadian Trucking Associations has admitted frankly that so far as the evidence indicates to date, the railways have not operated their subsidiary trucking companies in such a way as to eliminate their competitors. This is no guarantee, however, that they will not take such action in the future. The statistics have indicated a steady growth in the amount of freight moving on the highway. As the railway problem increases and as more and more freight moves on the highway, the railways may find it necessary to take action through their trucking subsidiaries for the purpose of reducing a rate in order to eliminate competitors in a certain area of Canada.

In the United States of America the railways are not permitted by Federal Regulatory Authorities to acquire competing and parallel truck

lines. By the same token, the Trucking Industry in the United States is not permitted to purchase a competing or parallel railway. This statement, while ridiculous in Canada, is not so ridiculous in the United States as there are several trucking concerns with investments and profits in excess of several of the American class two railroads. It is further respectfully submitted that the British experiment of nationalizing both the railways and the Trucking Industry to provide an integrated service has proved disastrous. The railways are now suffering substantial losses in Great Britain and the authorities have found it necessary to attempt to unscramble the eggs and return a substantial portion of the Trucking Industry to private enterprise. It is submitted by Canadian Trucking Associations that there is a real danger of the railways re-acquiring a monopoly position, at least in certain areas of Canada, if they are permitted to continue to purchase truck lines in the future as they have in the past.

The examination of the record indicates that three of the trucking companies owned or controlled by the Canadian Pacific Railway operate between the Ontario City of Cornwall and the Quebec City of Montreal. A further examination of the record will indicate that these three companies are the only Class "A" highway operators between those two important cities. In other words, there is no independent truck operator operating between Cornwall and Montreal. It is submitted that this is an example of the return of the monopoly position which the railways have acquired in this area as a result of the control of these three truck operations.

The position of Canadian Trucking Associations with respect to the Canadian National Railway is based upon additional grounds. Canadian National Railway is owned by the taxpayers of Canada and can be fairly described as a nationalized railway. Every time the Canadian National Railway purchases an independent truck operation it amounts to nationalization of that operation. And so, if you have two truck operators competing between points A and B and one is acquired by the Canadian National Railway, you have, in effect, the independent truck operator competing with a subsidized and nationalized truck competitor whose losses, if any, are paid by the Canadian National Railway; whose losses are paid by the tax payers of Canada including the independent truck operator.

It is respectfully submitted that the railway should be prohibited from further purchase of competing truck lines and that if they are to be permitted to operate trucks it should be as a complementary service where, it is considered in the public interest, the railways require a complementary truck service to operate. The Province of Quebec has indicated that this service should not extend beyond a pick-up and delivery service in urban areas (p.20672) and that they should make arrangements with independent truck operators for any service beyond that point.

It should be possible for the railways and the Trucking Industry to collaborate in the movement of goods to outlying areas in the same way that the railways have collaborated with cartage firms in urban centres for delivery of goods from railway depots to destination points in and around large cities.

It should be recalled that in connection with the evidence given to this Commission at page 18771 the merchandizing service of the Canadian Pacific Railway will be used in such a way that goods will move by rail or by truck depending upon the decision of the railway itself. Several of the subsidiary trucking operations are not wholly owned by the Canadian Pacific Railway and it is submitted that if the railways arbitrarily take away the right of the truck operation to earn its profit by designating rail over truck, the railway is affecting the revenue position of the truck subsidiary and can adversely affect the rights of the minority shareholders of those companies.

Recognizing the fact that there would be certain circumstances under which a regulatory authority might decide that the railways should be permitted to operate a truck line, the draft Highway Act of the Canadian Trucking Associations has provided that if the regulatory authority believes that, in the public interest, it is necessary to grant an authority to a railway to operate a truck line the provision in the draft Act would permit that authority to give the necessary permission.

It is further submitted that the making of joint through rates between railways and independent truck operators should be recommended. The Canadian National Railway has recommended an amendment of the Railway Act to make more certain the right to make such joint rates. The amendment is supported by Canadian Trucking Associations and the extension of these rates is also supported by the Province of Quebec:

P.20673 - Province of Quebec

"Where the railway wish to use trucking services outside pick-up and delivery services, our recommendation is that the railways work out transportation agreements with independent truckers."

SUBSIDY

Comments, discussions and arguments with respect to the question of subsidy has occupied much of the Commission's time. Before directing some remarks to the question of subsidy I should like to clarify the position of Canadian Trucking Associations with respect to the question of the Statutory grain rates. This question, raised at the first day of the hearings, has occupied a vast amount of time and attention of this Commission. The Commission will have realized that Canadian Trucking Associations and I, as its Counsel, have taken little part in the cross-examination with respect to the Western grain rates. The Trucking Industry of Canada is well aware that strenuous efforts are being made to persuade this Commission to make recommendations that will unshackle the grain rates so that they will find a "just and reasonable level". It is, therefore, necessary that I consider the haulage of grain by the Trucking Industry.

TRUCKS HAULING GRAIN

A great deal has been said to this Commission about the ability of trucks to haul grain. Mr. Donald Gordon at page 1374 stated that some Western grain was being hauled by trucks. Mr. C.L. McCoy, C.N.R. stated that there was a movement of domestic grain in the Prairies by truck:

P. 3173-4

Q: It is not a fact that the higher rate for domestic grain in the Prairies means that a lot of that grain is moved by truck?

A: I wouldn't say all of it, no: I don't think so. There may be some movement by truck. I know there is a movement of flour from Medicine Hat, Portage La Prairie and Winnipeg and I believe by using competitive rates we got the business back.

The Alberta Farmers' Union stated that large amounts of grain were moved by truck in Alberta:

P. 5749 - (E.C. Nelson, President of Alberta Farmers' Union being cross-examined by F.R. Hume, Q.C.)

Q: "Now, just arising out of your remarks, does much grain move by truck in Alberta say, distances in excess of 100 miles?"

A: "I have no figures to show you the actual amount of grain that is moved that distance, but in the past four or five years, with the heavy movement of grain that has been taking place, because of the excess production in certain areas and a shortage in other areas, a large amount of grain has been hauled by that method but I can't give you the figures."

Q: ".....Is much grain hauled by the tandem truck?"

A: "In certain areas quite a lot of grain has been hauled in the last three or four years."

The witness for United Grain Growers, Mr. Brownlee, gave interesting evidence that the movement of grain by truck will grow:

P. 14237

Q: "Mr. Brownlee you haven't touched at all in your submission on movement of grain by truck or movement which might be possible in the future. Could you give the Commission your views as to the possibility in the future of movement of grain to a significant degree by road transport?"

(Questioned by Mr. Cooper)

A: "I could not venture to speak with any more authority than anyone else in this room. We do know this, that five years ago the idea of sending the grain by truck was not known in the west and I doubt if anybody in the west expected that it would take place. The fact remains that, today, from our two elevators at Creston and Windell, B.C., or I will say these two points, Creston and Windell, British Columbia, at which we have elevators, that the greater part of the product of that territory is now moving by truck to the Pacific Coast their haulage is somewhat up to 590 miles and their cost works out at something less than 2¢ per mile."

Grain is moved from the Creston, B.C. area to Vancouver at 1.9¢ per ton mile (p. 18784-6).

In the United States of America there is a substantial movement of grain both domestic and export by truck (see the evidence of Mr. Edsforth at p.1848; the evidence of the Province of British Columbia p.13473; the evidence of United Grain Growers p.14154) :

P.18787 - (Cross-examination of Mr. R.A. Emerson of Canadian Pacific Railways)

"There is a substantially greater movement of grain in the western United States of course than there is in Canada where first of all, railways are much higher -- much, much higher -- and secondly there is much greater domestic consumption of grain and much of it moves to local points for that reason and also to points on the Mississippi water system for furtherance by barge."

P.1877 - The witness (C.D. Edsforth, Vice-President, Canadian Pacific Railways)

"There are some fairly long hauls of grain by truck in the United States, that is so."

The importance of the Trucking Industry to the farmers of Canada is patent and was brought out by the witness for Canadian Federation of Agriculture at p.10108-9 who indicated that the use of trucks has provided substantial savings to the farmers and has widened the farmers' market area. It is therefore the conviction of Canadian Trucking Associations that the movement of grain by truck will increase substantially in Canada in the future and that if the Parliament of Canada releases the rate on export grain, either by reason of recommendations of this Commission or otherwise, that export grain will move by truck as it does in the United States.

Evidence was given to this Commission by Canadian Trucking Associations of the movement of grain to export positions by truck in the United States. The grain rate in the United States is not a statutory rate and has been allowed to find its level in the competitive market. In fact the evidence indicates that the railway grain rate in the United States is a truck competitive rate from many points. Unloading facilities have been developed in the United States and grain

is trucked to Minneapolis Ports for distances up to seven hundred miles (P. 14154).

In the future some trucks will haul grain from point A to point B as a front-haul or as its important freight. Other trucks will haul grain from point A to point B as a back-haul movement. Every truck that leaves its terminal and goes to a distant point must return. It does not matter whether a rate is a front-haul or a back-haul rate - the economic effect is that the shipper receives the benefit of the competitive situation. The truck operator who is hauling grain from Creston, British Columbia to Vancouver and Pacific Coast points is hauling more grain from that area than the railway (p.18784-86).

I do not propose to argue whether, at the present time, at one-half cent a ton mile, any truck operator in Canada could economically haul grain destined for export to tide water points. There is some evidence that grain does move at .02¢ per ton mile (p.18785). The important fact, however, is that if the rate is permitted to find a just and reasonable level, as it has in the United States, the truck will haul export grain to tide water and facilities will be built in order to permit the unloading of trucks at tide water points, unless the rate is paid by a subsidy which is tied to the railways.

P.1848 - C.D. Edsforth, C.P.R.

Q: "Is it not true in the United States there is a substantial truck movement of grain and grain products to export points?"

A: "Yes, a substantial movement in certain areas for certain lengths of hauls, Mr. Hume, but you must remember that in the United States the rates are sometimes three and a half or even more times the Crow's Nest rates to Fort William."

Both railways have requested that this Commission recommend that the rate be released from the Statutory hold-down by the granting of some sort of payment in the case of the Canadian National Railway or

by some sort of income tax adjustment in the case of the Canadian Pacific Railway, in order that the carrier will receive more revenue than it now receives for the carrying of grain.

If some relief is granted to the railways and more money is paid for the movement of grain than the present statutory rate, it is the respectful submission of Canadian Trucking Associations that the recommendations must recognize that the Trucking Industry should have an opportunity of competing for that traffic in the future.

THE PAYMENT OF SUBSIDIES TO DATE

With few exceptions subsidies that have been paid for the movement of goods have been "railway" subsidies. The railways, under the control and jurisdiction of the Parliament of Canada, have historically been the chosen instrument of the Federal Government in cases where assistance has been paid for the movement of goods. An example is the Maritime Freight Rates Act. It is submitted that the reason for this attitude is understandable and historical. It is, however, to be noted that jurisdiction has shifted and transportation, having achieved such an important part in the economy of Canada, it is now submitted that subsidies paid for the movement of goods should be paid in such a way that competing media of transportation have an equal opportunity of sharing in the payments. The position of Canadian Trucking Associations is supported by important witnesses who appeared before this Commission.

Mr. Donald Gordon wants the subsidy payment for grain to be paid to the farmers so that the farmer pays the railways an increased rate and agreed that this subsidy should apply to the Canadian National Railway trucking subsidiaries:

P. 1337

Q: "If the amount to be paid as a just and reasonable rate is sufficient to attract the competitive modes of transportation, would you feel this pay-

ment which you do not want to call a subsidy might also be made to the farmer so that he might apply an alternative mode of transportation?"

- A: "There is nothing I would like more than to find a method whereby the payment by the Government would be given to the individual farmer and the individual farmer would pay a just and reasonable freight rate direct. All we in the railways are asking is to be paid for our services on a proper basis and if the farmer can pay it himself direct it would be alright with us".

P.1338

- Q: "If Canadian National Transportation Ltd. decided to haul the grain from Manitoba to the head of the lakes would you feel your subsidy might also be paid for this movement?"

- A: "I would always feel that any method of transportation that would be operated by the Canadian National Railways should be paid a proper return for services rendered."

The Board of Transport Commissioners would determine a just and reasonable grain rate (p.1372-3) and that this would be subject to future freight rate increases (p.1393).

Mr. C. D. Edsforth stated that the grain subsidy should be paid to the Western grain shipper in order that just and reasonable rates could be paid to the railway;

P.1813 - (Cross-examination of C.D. Edsforth of Canadian Pacific Railways by Charles Brazier, Esq., Q.C.)

- A: "Well Mr. Brazier, if this is the position I think, the subsidy which we are suggesting should be paid to the western grain shippers, in order that the fair and reasonable level of grain rates be paid to the railways, as relation to the total cost of handling that traffic."

At P.1857 - (Cross-examined by F.R. Hume, Esq., Q.C.)

- A: "Well I think as in the case of the statutory grain it (referring to a subsidy) should be paid to the shipper who would be reimbursed in order to permit him to pay reasonable rates."

At P.1859

"I think the records should be made quite clear that

my friend Mr. Edsforth said that this is a payment to be made to the shipper and this is the first time in all of the precis I have read where the statement appears that this payment should be made to the shipper."

Mr. Hume:

"I am very delighted with the answer and that is what I was hoping Mr. Edsforth would say."

The City of Saskatoon in its brief indicated that any grain subsidy should be paid so that all media of transportation share in the subsidy (p.9155):

"Other modes of traffic are just as entitled as the railways on the same ground".

The Province of British Columbia points out if subsidies are paid to the shipper, the shipper gets a free choice of the media of transportation and that this results in a better allocation of transportation resources (p.13493). It was stated by J. E. Brownlee of United Grain Growers that the subsidy should be paid to the shipper and not to the railways:

"Well I can only again reply that we can only again hope that it will not be necessary to pay a subsidy related to grain and grain shipment. I think, of course, I would have to agree with you that if in the wisdom of those who make our laws they should decide that in some way a subsidy were to be paid to assist producers it should be paid to them and not to somebody who is agent for them."

The Province of Quebec feels that subsidies should be paid for the benefit of all media of transportation and should be paid to the shipper (p.20798 and p.20847).

Certain of the evidence indicated that the rate for grain might achieve the same level as the rate in the United States. If this is the case, it is evident that the trucks will become exceedingly competitive with the railways for this freight.

It is respectfully submitted that, if this Commission intends to report that the rate on Western grain is not on a just and

reasonable level (even though the Western grain producer may not be required to pay any more for the movement of his grain) and if the difference is to be made up out of the public treasury, this Commission should be fully aware of the possibility that those recommendations, if they do not recognize competing means of transportation and recommend a method of payment so that the trucking industry will be precluded from an opportunity of providing a competitive service, then those recommendations will be repeating a mistake that was made (perhaps innocently) at the time of the passing of the Maritime Freight Rates Act.

Without entering into the controversy as to whether the rates should be altered; whether the Crow's Nest Pass Agreement is still in effect; or whether a subsidy should be paid in the public interest, Canadian Trucking Associations on behalf of the Trucking Industry in Canada submits that if this Commission recommends additional payments for the carriage of export grain, those recommendations should recognize that the payments should not discriminate against the Trucking Industry but be paid in such a way that the shipper has a free choice of deciding how he wants his grain to move.

MARITIME FREIGHT RATES ACT

The Canadian Trucking Industry points to the Maritime Freight Rates Act as an example of a mistake that should not be repeated. This Act was introduced at a time in history when the Trucking Industry was not a factor in inter-city transportation and it naturally provides that the assistance is to be paid to the two railways. If the normal rate for forwarding goods from point A in the select territory to point B in the select territory is \$1.00, the railway quotes the shipper 80¢ and the shipper pays 80¢. If the truck operator is to be competitive price-wise, he must also quote 80¢. If the railways move half the goods and the truck operator moves half the goods, the competitive disadvantage

of the truck operator is quite apparent because the railways receive the additional 20¢ from the taxpayers of Canada and the truck operator, not only does not receive this payment, but contributes to the 20¢ paid to the railway. It should be noted in passing that if part of the goods moving from point A to point B are moved by a trucking company which is a subsidiary of a railway company, the railway company still receives the subsidy of the portion of the truck haul but the independent truck operator does not have an opportunity of sharing in this payment.

By any measurement that anybody wishes to make, the Trucking Industry in the Maritimes is far behind the development of the Trucking Industry in other portions of Canada. This may be partly attributed to inferior roads and it may be partly attributed to general economic conditions prevailing in the Maritimes. It is the opinion of the Maritime Trucking Industry, however, that the most important and compelling reason is its unfair position under the Maritime Freight Rates Act. The Maritimes would like to have a trucking industry as competitive as that in Central Canada. They complain that because there is less competition in the Maritimes they have fewer competitive rates and that therefore when a percentage horizontal increase is granted, the Maritimes are required to pay a larger portion of the freight bill than the people in Central Canada. There is no doubt that the development of the Trucking Industry in the Maritimes has lagged behind the development of the Trucking Industry elsewhere in Canada and the Maritime Freight Rates Act must take a large share of the blame for this situation.

This fact has been recognized by the Maritime Provinces in their submission to this Commission. It is of great significance that the Maritime Transportation Commission advocated that the Trucking Industry would share in the increased subsidy that is proposed under the Maritime Freight Rates Act, because, the Commission claims, if the Trucking Industry

did not share in this increased subsidy, their competitive position would be seriously affected.

After admitting that the truck operators in the Maritimes had complained that the Maritime Freight Rates Act affected their competitive position (p.14498), the Commission admitted that the Act was one of the factors inhibiting truck development in that area (p.14590). The Maritime Commission has advocated to this Royal Commission that the amount of the subvention under that Act be increased and they have recommended that the Trucking Industry share equally with other means of transportation in this increased subvention.

This is the first time that any Government of any Province in Canada has officially recommended the payment of a subvention to the Trucking Industry and it is a recognition of the growth and development of the Trucking Industry.

The reasons for not advocating the equal payment of the whole subsidy under that Act were difficult to understand. When asked why, if it was logical to pay the increased subvention to the Trucking Industry, it was not equally logical to pay all the subsidy, the witness stated that he was unable to answer the inquiry:

P.14602 - C. F. Dickson, Maritime Transportation Commission.

Q: "What is so special about this additional subsidy that does not apply to the present subvention? In other words, if, ideally, it should be paid to the transport user or should be paid to all types of transportation, what is so special about this extra thirty odd per cent that doesn't apply to the first thirty odd per cent?"

A: "I'm afraid I can't answer you Mr. Hume."

I submit that the Maritime Transportation Commission, speaking as it does on behalf of the four Maritime Provinces, must, to be logical, agree that if the increased subvention is apt to restrict and inhibit the growth and competitive position of the Trucking Industry in that area,

then any payments made under the Maritime Freight Rates Act are equally harmful.

The Trucking Industry therefore recommends that payments under the Maritime Freight Rates Act be paid to the shipper so that the shipper is free to choose his own method of transportation and so that one transportation agency does not gain an artificial advantage over the other at the expense of the taxpayer. Premier Fleming, at page 242, indicated the importance of opening up expanding markets in the rest of Canada and that the payment of the Maritime Freight Rates Act subvention to all methods of moving goods was in the best interest of the Maritimes. Mr. Alex Hill of Acadia Atlantic Sugar Co. agreed that the subsidy should be paid to all media of transportation (p.436). Canada & Dominion Sugar Co. agreed that it was a matter of discrimination that only the railways got the benefit under this Act. Mr. Edsforth on behalf of the Canadian Pacific Railway admitted that the assistance should be paid to the shipper:

P.18179 - (Mr. C.D.Edsforth, Canadian Pacific Railways
discussing the Maritime Freight Rates Act
subsidy)

"Now, of course, I am not in a position to say whether this kind of assistance is needed or not but if it is decided that the shippers in the Maritime Provinces require assistance of the order mentioned, it is my view that this should be paid directly to the shippers who are able to demonstrate to the responsible authorities their need for assistance. In other words, it is the shipper who would need the assistance and it should not be tied to transportation costs."

The Province of Quebec in its submission opposes the increased subvention but does not oppose the principle that the payment of the subvention should be to all media of transportation (p.20847). Maritime Transportation Commission agreed that updating of the Maritime Freight Rates Act would give the shipper a free choice of carrier.

It is further submitted on behalf of Canadian Trucking Associa-

tions that there would be no serious administrative difficulty in paying these subventions that could not be overcome. The then Minister of Transport, under date of July 10th, 1959, requested Canadian Trucking Associations to bring this matter to the attention of this Royal Commission. The matter having been brought to the Commission it is the hope of the Canadian Trucking Industry that the Commission will recognize that the payment of a subvention on normal rates, competitive rates and agreed charges to the railways and not to the Trucking Industry is an unfair practice, and that they will recommend that any subventions under the Maritime Freight Rates Act be paid to the shipper so that all media of transportation may equally benefit and that this would naturally apply to any increase, if an increase is to be recommended.

BRIDGE SUBSIDY

With respect to the bridge subsidy, this payment was brought into effect as the result of the Turgeon Commission and has been attacked by various parties before this Commission for a variety of reasons. The Province of British Columbia sees the bridge subsidy as unfair in permitting the manufactured goods of Eastern Canada to find their way into Manitoba and Saskatchewan at a rate lower than normal and thus compete unfairly with the British Columbia goods. The subsidy permits the establishment of artificially low rates on certain freight movements and therefore interferes artificially with normal pricing mechanism. The only freight eligible for the subsidy is non-competitive traffic but the amount of the subsidy is a set sum. As the evidence indicates, this area of traffic is gradually shrinking and as the payment of the seven million dollars does not depend upon the volume of the freight shipped, it will be seen that eventually certain movements will be very heavily subsidized and the rates could become completely unrealistic. The truck operator also has to make a long haul across the area north of the Great Lakes or

he has to travel via American highways and pay heavy state taxes and license fees for the privilege of doing so. The trans-continental operator does not receive any bridge subsidy and the area is as unproductive for him as it is for the railways. As more and more freight moves across the "bridge" by agreed charges or competitive rates, the annual subsidy can throw certain rates completely out of line and it is recommended by Canadian Trucking Associations that this subsidy be abolished.

FREIGHT RATES REDUCTION ACT

This Act originally provided for the payment of twenty million dollars and was later increased by a further seventeen million dollars. The Trucking Industry was and is violently opposed to the principle behind and the payment under this Act. As the railway costs went up, they required more revenue and brought an application for a rate increase. The increase was found to be justified and was granted. At the same time the truck operator's costs went up and he also required to receive more money for the carriage of his goods.

As a result of protests to the Government of Canada, the Government suspended the operation of the increase and granted the twenty million dollar subsidy to the railroad.

The Government forgot the truck operator.

The effect of the Freight Rates Reduction Act was to pay a sum of money to the railroads to assist them in their financial difficulty without any regard whatsoever to their competitors or the effect that such a payment would have on the competitor.

The competitor, as a taxpayer of Canada, is paying part of the subsidy and so the truck operator is aware that while he receives no consideration with respect to his rising costs, part of his tax dollar is being used to subsidize his railway competitor. It is respectfully submitted that this Commission should make no recommendation for the

perpetuation of the Freight Rates Reduction Act. If the railways require additional revenue for the purpose of moving their goods, so do the truck operators. Neither one media nor the other has any monopoly on constant costs and the level of rate should be determined in the market place and not by artificial subsidization of one of the transport agencies.

It must be further remembered that in some of the Provinces of Canada the truck rates are regulated. The trucker is not free to increase his rates in those areas without receiving the permission of the regulatory tribunal. As the truck operator's costs go up he must apply for an increase in his freight rates and if he can show proper cause to the regulatory authority, he will receive the increase. The staggering effect of an artificial freight payment to the railways by way of subsidy can be imagined and it is hoped by the Trucking Industry that this Commission will recognize these matters in making any recommendations with respect to freight rate freezes in the future.

One of the main fears of the Trucking Industry was eloquently voiced by Commissioner Anscomb who said, referring to subsidies at page 20963,

"Once it is on, it is never taken off".

REVIEW OF SUBSIDY POSITION

Concluding my remarks on the question of subsidy, I would like to speak generally with respect to this matter in order to sum up the position that I have advanced on behalf of the Canadian Trucking Industry. The Trucking Industry is not asking for any subsidies as such. It must be recognized as an economic fact of life that every transportation agency operating in Canada has received subsidy assistance in one form or another. The air lines have the privilege of using expensive airports and weather information. It is presumed that the fees that the air lines pay for

the privilege of using the air ports and the weather information is a fair and reasonable fee and will compensate the taxpayer for the construction of these facilities.

The shipping companies have the advantage of the seaway canal, locks and other facilities provided at the expense of the taxpayer. A fee is charged for some of these services and it is presumed that the fee is set at a proper and reasonable level.

The Trucking Industry receives the use of highways constructed at the expense of the taxpayer and a fee is charged for the use of those highways. It may be presumed, as was said by the Turgeon Commission Report at page 266:

"That it is in the interests of the Province to collect at least enough revenue from this source to avoid loss if not to make a profit and there does not seem to be any reason to suppose that this is not being done".

It is my interpretation of the evidence of the Officials of the Canadian Pacific Railway that they are opposed to the granting of subsidies to the railways as such. An example of a subsidy that is paid directly to the shipper is the Feed Grain Assistance Act subsidy. The Feed Grain subsidy is paid directly to the shipper who pays the freight charges and some of the feed grain moves by truck and some of it moves by rail:

P.3019 - C. L. McCoy, C.N.R.

"The administration of the feed-grain subsidies does not involve railway, freight way-bills or tariff. In this case the subvention is paid directly to the person who pays the freight charges".

This is an example where the producer of the product receives Government assistance as a necessary part of the economic development of the country and the subsidy is definitely a feed grain subsidy rather than a transportation subsidy. Certain subsidies are paid with respect to the movement of coal which are made for the purpose of assisting the

producer and those in the business of marketing coal.

It is respectfully submitted by Canadian Trucking Associations that the transportation agencies should not receive and do not require direct subsidy. If the movement of goods is to be subsidized, then the subsidy should be paid to the shipper who will use the subsidy or a portion thereof for the purpose of defraying the proper freight costs of the movement. An example is furnished by certain farm subsidies in the United States. The producers of grain in the United States have to pay the normal freight rate on grain, even to export position. The carrier receives proper full rate and the trucks and the railways compete for the grain and there are in fact competitive rates in existence for this movement. It is to be noted, however, that the farmer receives benefits and assistance in other ways which are clearly farm subsidies and are paid and intended as such.

Much has been said before the Commission that if the trucks are to eventually share in the subsidy for the hauling of grain in Canada they must be ready to take on the same obligations as the railways - and this is intended to refer to the lack of demurrage and the fact that certain grain movements have priority. If the Government is administering a subsidy for the movement of grain which is paid directly to the shipper, the shipper will be free to select the means of transportation best suited to his needs. The Government is also free to make whatever regulations are required with respect to the movement of grain by truck and to impose those regulations on the Trucking Industry. If the Maritime Freight Rates Act is administered as urged by the Canadian Trucking Industry it would be a transportation subsidy but it would be paid to the shipper who receives assistance in the movement of his goods by the transportation agency of his choice.

Canadian Trucking Associations, in its submission to this

Commission, made three important points with respect to any recommendations dealing with subsidies and I should like to restate them here for emphasis.

(a) If subsidies are necessary, the method of paying the subsidy should be such that it does not interfere with the natural development of competitive forces in the transportation field in Canada.

(b) Whenever it is not possible or practical to pay the subsidy to the shipper or to all types of competing carriers, methods of implementing policies of assistance other than by subsidy should be considered.

(c) If a subsidy has to be paid, the subsidy should be paid to the shipper who would then be free to select that form of transportation which best suits his needs.

OTHER ASSETS

I should like to direct a few remarks to the question raised by sub-paragraph (d) of the Order-in-Council with respect to "other assets" and the extent to which they should be taken into account in establishing freight rates. It was the position of Canadian Trucking Associations that the inclusion of "other assets" is economically unsound and is bound to create dislocation in the investment policies of the railways affected. The first problem involved is to decide what constitutes "other assets", and this would have to be carefully defined.

A restaurant connected with a railway station might fall into rail earnings or "other assets" depending upon the definition. Other investments of the railways have their own peculiar investment needs and, if they make a profit, there are some who argue that this profit should be taken into consideration in fixing rail rates.

What of the other side of the coin? If the other assets incur a loss, it is then equally reasonable to request the freight rate shippers of Canada to subsidize the endeavour by making up the loss out of freight

revenues. This is the very matter complained of in many parts of Canada with respect to losses on passenger traffic.

There are also some truck operators in Canada who are affected by similar considerations. Some of the large trucking firms have other subsidiary undertakings and in one or two cases, the subsidiary undertaking has grown to be larger than the trucking operation. It is respectfully submitted that one gets onto very dangerous ground if it is suggested that there should be cross-subsidization between various undertakings of the business. A ceiling on freight rates is regulated as a matter of public policy with respect to the movement of goods by rail, and in some Provinces with respect to the movement of goods by truck. It is respectfully submitted that a collateral or subsidiary operation of a transport company should have nothing to do with the revenue requirements of the transportation endeavour.

CONTROL AND REGULATION

I should like now to turn to one of the most important parts of the submission of Canadian Trucking Associations - that of the control and regulation of the Trucking Industry in Canada. I have already indicated some of the problems that arose out of the jurisdictional mix-up under which it was originally considered that all trucking was under the control and jurisdiction of the Provinces and that railways, under the terms of the British North America Act, were under the control and jurisdiction of the Parliament of Canada.

In the past this has produced a feeling on the part of a great many people in Canada that the railways were the special responsibility of the Parliament of Canada and that the trucking industry was the special responsibility of the Provinces.

This is still true with respect to intra-provincial trucking which is under Provincial jurisdiction. It is not true, as I have

indicated above, in the case of international and inter-provincial trucking. In the Winner case, the Supreme Court of Canada did not have much to say with respect to the intra-provincial components of an inter-provincial truck operation. This matter was raised on appeal to the Judicial Committee of the Privy Council and the Judicial Committee of the Privy Council has made it quite clear that not only is the inter-provincial and international portion of the undertaking under the jurisdiction of the Parliament of Canada but so also is the intra-provincial component of that undertaking.

A truck line operating from Port Arthur to Winnipeg is clearly an inter-provincial truck operation and is under Federal control. A truck line operating between Winnipeg and Brandon is an intra-provincial operation and is under Provincial control. The scope of the Trucking Industry is increasing and, due to technological improvements, better roads and the development of the industry, the length of haul steadily becomes larger. Whereas originally the large volume of goods moving by highway was intra-provincial, now the inter-provincial segment of the truck traffic is becoming increasingly important. It was stated to be important in the report of the Turgeon Commission and the DBS figures show this importance is increasing. Because of the historical background under which the Provinces have regulated the Trucking Industry until 1954 and because of an obvious reluctance on the part of the Parliament of Canada to assume the regulation and control of inter-provincial and international trucking, the Motor Vehicle Transport Act was passed and is now in force in all Provinces of Canada except the Province of Newfoundland.

The policy of Canadian Trucking Associations is opposed to Federal control of its operations by a Federal Transport Board. In order to understand the policy of the Trucking Industry and to better assist the

Commission in understanding the proposals put forward by Canadian Trucking Associations, I should say a word as to the background and basis for the position of the Trucking Industry in Canada.

In 1932 the Duff Commission indicated in its report that there should be some sort of conference in order that the growth of motor truck traffic on the highways would be "restricted" to assist the railways. The Commission stated quite boldly at page 105 of its report that in certain areas in Canada, where rail traffic was being made unprofitable by the competition of trucks, that steps should be taken to restrict or even prohibit the highway carriers from operating in these areas. The attitude and wording of this report was certainly not calculated to generate any great confidence in the trucking operators that the Federal Government did not intend to artificially restrict them in order to assist the railways.

It should also be realized that there have been examples of deliberate discrimination against the Trucking Industry to assist the railways. These examples were discussed in the evidence presented to the Turgeon Commission but were not repeated at this Commission because, quite happily, they had been largely eradicated. They did exist, however, and they did not create any great confidence in the minds of the truck operators in Canada that the Federal Government had their interests at heart to the same extent as it had the interests of the railways.

The third factor that should be remembered is that the Government of Canada is in the railroad business and because of these several factors and because historically it was considered that the Federal Government should safeguard the railways and let the Provinces look after the trucks, the trucking operators in Canada formulated the policy by which they feel regulation of the Trucking Industry by a central Federal Board would be undesirable.

At the Turgeon Commission there was a great deal of evidence and many requests for regulation of the Trucking Industry by railway witnesses. These were interpreted at that time as meaning regulation by a Federal authority and it was the opinion of the Trucking Industry that the cry for regulation in 1949 and 1950 must have meant regulation of a restrictive nature. It is therefore not difficult to appreciate why the Trucking Industry has been opposed to Federal regulation by a central regulatory authority.

It was therefore not surprising that after the decision in the Winner case and the reluctance of the Board of Transport Commissioners, or any other Board, to take on the responsibility of regulating international and inter-provincial trucking, a conference between the Federal Government and the Provinces agreed that a solution to the problem would be to preserve the present system and method of regulation. The Motor Vehicle Transport Act was passed as a result of that conference. It adopted a technique which had received judicial approval in the case of *in re Prince Edward Island Potato Marketing Board* (1952) 2 S.C.R. page 392.

It had been decided as a principle of Canadian constitutional law that if the Federal Government was granted an area of jurisdiction under the British North America Act, it could not delegate that area to a Province nor could the Province delegate an area of jurisdiction to the Dominion. In other words, the Provinces and the Dominion could not make a trade. The Prince Edward Island Potato Marketing Board case decided, however, that there was nothing wrong with constituting a Provincial Marketing Board as a "Federal" Marketing Board to carry out certain Federal marketing legislation and regulations. Adopting this technique, the Motor Vehicle Transport Act, which received Royal Assent on June 26, 1954, provided that where, by the law of a Province, a license is required for an intra-provincial operation, then an extra-provincial license under

the Federal Act is also required. The Provincial Board, or Regulatory Official, sits as a Federal Board or Official for the purposes of the Motor Vehicle Transport Act. The Board receives its authority under the Motor Vehicle Transport Act and the license which it issues is a Federal license.

This procedure appeared to satisfy the Federal Government who did not wish to assume the jurisdiction which the Court had decided was its responsibility. It also appeared to suit the Provinces who had been, up until the Winner case, regulating the Trucking Industry. It also suited the Trucking Industry in that they would continue to be controlled and regulated by Provincial personnel sitting as a Federal Regulatory Board.

Certain shortcomings of the Act, however, became apparent and the submission of Canadian Trucking Associations has fully set out the difficulties that have arisen in Part 10 of its submission which appears in Volumes 59 and 60.

In the result, if a truck operator wishes to carry out his undertaking for the carriage of general freight from Regina to Toronto he must apply to three Federal Boards for permission to operate if he desires to run on an all Canadian route. He first must apply to the Saskatchewan Board which, sitting as a Federal Board, grants him a license which is good for the Province of Saskatchewan. The operator must then apply to the Manitoba Board, which Board, similarly sitting as a Federal Board, hears the application and may grant him a license which is a Federal License and which covers the geographical area of Manitoba. The operator finally must then apply to the Ontario Board which, similarly sitting as a Federal Board, hears the application and grants a license with respect to that part of the route in Ontario. The applicant therefore comes under three sets of regulations; receives three separate Federal licenses;

and is required to go to three sets of public hearings. This is multiplied if you take an all Canadian route from Vancouver to Montreal.

One of the shortcomings of the present Act is that one of these several Federal Regulatory Boards can render an opposite decision on the same application. In the example above, Saskatchewan and Ontario could give a favourable decision and the applicant could be turned down in Manitoba. The result is that the operator could not operate between the two Provinces named unless he is prepared to travel through the United States of America. The present Act does not authorize joint hearings and so situations arise in which one Regulatory Tribunal gives one decision and another renders another on the same set of facts. One contrary decision is, of course, sufficient to prevent the operation.

Also in the matter of rate regulation, under the Federal Act if there is no freight regulation in the home Province, then there is no rate regulation under the Motor Vehicle Transport Act. There are other deficiencies in the present Statute in that there is no procedure permitting a review of licenses or the cancellation of licenses in the event that an operator is not discharging his public duty or is otherwise unsuitable to continue as a truck operator.

In preparing for this Commission the Canadian Trucking Associations reviewed the opinions of truck operators across Canada and was able to say in its submission to this Commission that

"It can be stated unequivocally that there is not, at the present time, a single extra-provincial truck operator in Canada who considers the Motor Vehicle Transport Act is either an adequate or workable Statute".

Because the present Act is so unsatisfactory and because of the policy of Canadian Trucking Associations as opposed to the control of that Industry by a central Federal Board, Canadian Trucking Associations have brought forward a draft Act known as the Highway Transport Act which

has been submitted to the Commission as an alternative to the present situation. Some of the advantages of the draft Act are the preservation in Provincial Boards of the continued regulation of the Trucking Industry (sitting as Federal Boards with respect to that portion of the Industry that is not within Provincial control) but it avoids the multiplicity of hearings concerning which no one could possibly agree. The Provincial Boards have had a long experience in truck control. The evidence of J. J. Harold on behalf of the Province of Quebec to the Commission in Volumes 125 and 126 indicates the approach and type of control that is carried out in the Province of Quebec. This is duplicated in most of the other Provinces of Canada. Provincial Boards have had a long experience in truck control and are set up to properly control the industry. The Federal Government has no such agency at the present time and most of the transportation specialists with the Federal Government are ex-railway personnel or persons who have had little or no experience in the Trucking Industry.

The draft Highway Transport Act relates, of course, only to inter-provincial and international transport which it calls "extra-provincial transport". The Act would be administered by the Department of Transport at Ottawa. The Act contemplates the continued use of the device presently in existence of constituting provincial regulatory authorities as Federal authorities for the purposes of regulating the Trucking Industry over which the Parliament of Canada has jurisdiction. As the same personnel are regulating intra-provincial trucking, this will avoid possible conflicts between the two aspects of the Trucking Industry which are purely legal and are not based upon practical considerations. All extra-provincial transport operators must have a license under the authority of the suggested Act. The regulatory authority must consider whether public necessity and convenience require the license; must

consider the fitness and financial ability of the applicant to carry out the service and whether presently licensed operators are adequate to provide the service.

If an application concerns more than one Province a joint Board will hear the application. One implied criticism of the proposal was that the number of possible combinations of regulatory personnel is exceedingly high. This is, however, no reason to doubt that the system will work adequately. Examples can be found in a Province like Ontario where there are ten or twelve Judges of the Supreme Court of Ontario who sit in the appellant division and about thirty other Judges of the same Court who are available to sit in the appellant division if the need arises. The number of combinations of such Judges hearing appeals in panels of three in Ontario is equally very large. The system appears to work quite satisfactorily however.

It is believed that the practical applications would probably result in the allocation of one or another of the regulatory board members who would be designated to sit on joint hearings and the procedure would be orderly and far more satisfactory than the present procedure requiring a multiplicity of sittings at great expense and a terrific waste of time.

Provision is made in the draft Statute for the review, amendment or suspension of licenses and the approval of transfers of licenses or changes in the share ownership of corporate license holders. The suggested Act contains a section which provides that any person engaged in the transportation of goods other than by highways would not be able to own, lease or control a truck operation unless the joint transport board was of the opinion that it was in the public interest that such a license be issued. This is in furtherance of the policy of the Canadian Trucking Associations which was supported by the Province of Quebec, that the railway acquisition of parallel and competing truck lines would not be

allowed to expand or continue without some control based upon the public interest.

A section of the Act would prohibit freight forwarders from moving goods belonging to other persons via highway unless they were properly licensed but it would not in any way interfere with the ability of freight forwarders to carry on as they do at the present time by using pool-car or railway facilities. The draft Act provides for appeals to the Court on questions of jurisdiction or law but only if leave to appeal is obtained from the competent Court.

The Trucking Industry believes that there should be rate filing in Canada. This position was also supported by the Canadian Industrial Traffic League at page 9707. Because of this fact the suggested Act also provides for rate filing so that there would be a uniform system of rate filing across Canada under which truck operators, under the jurisdiction of the Parliament of Canada, would be required to file their rates with the Regulatory Tribunals. These Regulatory Tribunals would have the right to adjust and alter tariffs and if more than one Province was concerned this would be done by the joint action of a joint Board.

Considerable amount of time and attention at the hearings was occupied by the presentation of Part 10 and the cross-examination of Mr. John Magee with respect to this draft Act. It was presented as a careful and considered proposal to correct the situation which the Trucking Industry finds most unsatisfactory. It is respectfully submitted that this Commission should recommend that the proposed draft Act be approved by the Parliament of Canada and implemented as quickly as possible.

If, however, this Commission, after consideration of these matters, is unable to recommend the adoption of the proposed draft Act,

it is respectfully submitted that any recommendation for an alternative Statute should contain an additional recommendation that the Trucking Industry be consulted and have an opportunity to be heard with respect to any such amended Statute.

The draft Act contains other provisions designed, for example, to limit the percentage of freight that can be tied up by highway movement under an agreed charge type of contract if that agreed charge type of contract ever becomes universally employed in the Trucking Industry. It also contains provisions permitting the granting and filing of competitive rates in the same manner that the railways are free to quote competitive rates to answer truck competition. The suggested draft Statute is intended to present a constructive proposal for the assistance of the Commission. Like all suggested legislation, it no doubt contains some provisions which would have to be reviewed from time to time. It is very rare that Parliament passes a Statute which it finds it does not have to amend after further consideration or experience.

I wish to conclude this portion of the argument on the control and regulation of the Trucking Industry by making a strong plea that this matter receive the attention and consideration of this Commission. I refer the Commission to page 10918 at which point in the proceedings, the Commission ruled that the evidence of Canadian Trucking Associations with respect to their draft Highway Transport Act was relevant to the inquiry. Being relevant, the draft Act is presented to the Commission as a constructive proposal to solve this particular problem. If the Commission does not see fit to recommend the adoption of this suggested Act, I urge that the Commission recommend that some change in the present system of regulation under the Motor Vehicle Transport Act be made and if the Commission does not intend to recommend specific legislation, I urge that there be a further recommendation that the Trucking Industry have an

opportunity of expressing its wishes and views with respect to the formulation of any new legislation.

CONCLUSION

Because the members of the Commission have been required to read and study so many words I would wish that this argument could be reduced by half. I will say to the Commission that it is considerably shorter than the first draft I prepared. I have attempted neither to overstate nor understate my client's position or the evidence relating thereto. If I have transgressed it has not been deliberate.

I owe a duty to my client to make this additional submission to the Commission with respect to the deadline which has been announced for the Report. When one considers the amount of intellectual effort that has gone into the presentation of the various submissions and studies presented to this Commission in over one hundred and thirty-three days of hearing and when one considers the money that has been spent by Governments and all parties in preparing and presenting their views, it is somewhat disquieting to learn through the press that the Commission may be required, through circumstances over which it has no control, to shorten the time of ~~its~~ deliberations of the many complex and perplexing problems that have been presented for recommendation and solution. It is to be hoped that the deadline does not present an undue burden on the Commission and that it is able to take whatever time it deems necessary for the careful consideration of the matters involved in this most important enquiry.

As I was not present on January 17th 1961 when the public

hearings were concluded and could not join in the remarks of my colleagues, I cannot close without stating that I have considered it to be a very great honour to have had the privilege of appearing as Counsel before the Commission and I thank the Chairman and each member of the Commission and the staff for the courtesy that has been extended to me throughout the long hearings. I am fully aware, in common with most Canadians, of the sacrifice that the members of this Commission have made. No one expected that the hearings would have continued into January 1961. The members of this Commission have each made a tremendous personal sacrifice and upon the completion of your report will have made an outstanding contribution to your fellow Canadians. Those of us who have followed the hearings of the Commission and have been privileged to take part in those proceedings are fully aware of the extent of that sacrifice and the magnitude of your contribution. It is my sincere personal hope that I may have the opportunity to meet with each one of you again at some future time to renew the most pleasant and cordial relationship that has existed through the entire proceedings.

RESPECTFULLY SUBMITTED.

F. R. HUME
Of Counsel for Canadian Trucking
Associations

ROYAL COMMISSION ON TRANSPORTATION
IN CANADA

ARGUMENT

ON BEHALF OF

THE NORTH-WEST LINE ELEVATORS ASSOCIATION

(I) INTRODUCTION

The Association represents the free-enterprise section of the grain handling industry in Western Canada and its membership is composed of the following companies who between them operate 2,319 licensed elevators in Western Canada:-

Alberta Pacific Grain Co. (1943) Ltd., The
Canada West Grain Company Limited,
Ellison Milling & Elevator Company, Limited,
Federal Grain Limited,
Inter-Ocean Grain Company, Limited,
Lake of the Woods Milling Company, Limited,
McCabe Grain Company, Limited,
Midland & Pacific Grain Corporation, Limited,
National Grain Company, Limited,
Parrish & Heimbecker, Limited,
N.M. Paterson & Sons, Limited,
Pioneer Grain Company, Limited,
Quaker Oats Company of Canada Limited, The
Robin Hood Flour Mills, Limited,
Scottish Co-operative Wholesale Society, Limited,
Searle Grain Company, Limited.

The Association has closely followed the proceedings of the Commission. The Commission's Report will undoubtedly embody recommendations which will have far-reaching effects so far as the transportation industry and the economy of the country as a whole is concerned.

Much of the evidence presented to the Commission has been of a technical nature, and the Association feels it would be presumptuous of it to comment on this evidence. Other parts of it deal with problems and situations of which the Association has no immediate knowledge. Again the Association feels it should not attempt to interpret or comment upon such evidence. Accordingly the Association intends to direct its arguments towards certain areas which are either of supreme national importance or are areas of which the Association has particular and detailed knowledge. The three main categories into which the Association's arguments will fall are those concerned with:

- (1) the significance of the Crow's Nest Pass Agreement,
- (2) branch line policy, and
- (3) proposed subsidies to the Railways.

(II) SIGNIFICANCE OF THE CROW'S NEST PASS AGREEMENT:

(1) General

Generally speaking the Association approves and endorses the analysis of the history of the Crow's Nest Pass Agreement made by the Province of Saskatchewan appearing at Pages 14948 to 15061 of the Transcript.

(2) Formation of the Canadian Pacific Railway

As was pointed up in the submission of the Province of Saskatchewan, the Canadian Pacific Railway Company was conceived and formed as an instrument of national policy. It received substantial subsidies from the Government both at the time of its organization and in its formative years. Details of these subsidies and the context in which they were granted have been fully set out in evidence. It is the belief of the Association that the management of the Canadian Pacific Railway Company has, over the years, used wisely the resources and the powers devolved to it. Seldom has a commercial enterprise been entrusted with so much economic power and seldom has such a stewardship been generally as capably discharged. However, the circumstances of the Railway's conception and expansion give weight to the words of O.D. Skelton in the "Railway Builders" at page 159;

"The fact remains that the bulk of the resources utilized in the original building of the road (the C.P.R.) was provided or advanced by the people of Canada. The Canadian Pacific is truly a monument to public as well as to private faith."

(3) Events Leading to the Conclusion of the Crow's Nest Agreement

In reviewing the course of events which led to the conclusion of the Crow's Nest Pass Agreement, particularly with the advantage of the hindsight which we now have, it seems clear that it was to the advantage of both the Canadian Pacific Railway and the people of Canada as represented

by their Government, that a Canadian line should be built into southern British Columbia. It is now also obvious that the establishment of the rates set by the Crow's Nest Agreement, during the period in which they or lower rates have been in force, has been of economic advantage, not only to the West, but to the whole of Canada. Indeed it seems reasonable to suppose that if low export grain rates had not been achieved by the Crow's Nest Agreement, they would have been achieved by some other means.

So far as the actual building of the line is concerned, it seems clear that the Canadian Pacific Railway Company itself was anxious to secure access to southern British Columbia, particularly in view of its known mineral potential. The statement made by Mr. Blair, the Minister of Railways and Canals, in the House of Commons at the time that the Bill was passed, and quoted at Page 15007 of the Transcript, serves to reinforce this view. It will be recollected that he said:

"I know that in the report of a meeting of the shareholders of that company, which was held two months ago, the statement appeared that if the Government did not assist the Canadian Pacific Railway they would take hold of the work themselves without assistance. But I believe that that statement was not so much the declaration of a fact within the knowledge of the company itself as a statement put forward perhaps for the purpose of creating an impression for other ends, it may be upon public opinion or the Government of the country, and not that the company was in a position to take up the very large outlay involved by the construction of the line; because I believe that neither the Canadian Pacific Railway nor any other company at this time is so well situated that it would be able, without our aid, to construct the work."

The economic advantages which directly or indirectly have flowed to the Canadian Pacific Railway from building the line when it did, have made it obvious that the decision of the Canadian Pacific Railway management to go ahead with the project was a justifiable decision. Probably the bargain was struck without the railway's management giving serious consideration to the possibility of inflation. But even had this possibility been considered the management of the railway might have reached the same decision.

It was pointed out in evidence how, before the Crow's Nest line was built, there was a constant threat of penetration of southern

British Columbia by American Railroads. It seems obvious that this threat must have been viewed as such not only by the people and Government of Canada, but by the management of the Canadian Pacific Railway. The latter must have been more than anxious to exclude a rival road from an area which even then was known as likely to have a huge traffic potential.

If, on the one hand, the building of the line seemed desirable to the Canadian Pacific Railway management, the rate reductions which were made on the other must, at the time, have seemed to involve the Company in little hardship, and indeed, might well have been viewed by the Railway as being likely to come about in any event. The only significant product of the prairie economy at that time was grain. The only major market for that grain was overseas. To be competitive the grain had to be moved cheaply over the great continental land mass which separated the area of its production from the ports from which it could be exported. At the time it was probably a sound rate-making practice to set the rates on export grain at around the Crow level in order to maximize the traffic.

As was demonstrated in evidence, the Canadian Pacific Railway became the owners of millions of acres of land in Western Canada. It was clear that the only way the Railway could exploit this land, which appeared only suitable for agriculture, was by encouraging settlement on it. As has been seen, this was the policy which the Railway management immediately implemented. In 1889 it must have seemed obvious that in order to make the settlers already established, self-sufficient, and in order to attract new settlers to undeveloped Railway as well as Crown lands, it would be necessary to provide these settlers with a means of transport for their principal, and often their only, product to export positions. Without a heavy and constant flow of settlers, the prairies would remain a freight desert. Without reasonable rates for export grain, it would be difficult to attract settlers. The one factor was dependent upon the other. Again it seems likely that if the Crow's Nest Agreement had not been concluded, the Canadian Pacific Railway would have been obliged to give some similar guarantee of a fixed freight rate to the hundreds of thousands of prospective settlers from Eastern Canada and Europe who

wanted an assurance that a farming operation based on export could economically be carried on at a distance so far removed from the ultimate markets.

Reference is also made to the views on the value of the Canadian Pacific Railway of the Crow's Nest Pass Agreement, which were expressed by Sir Edward Beatty as recently as 1938 (Transcript Vol. 13, Page 1765) and expressed by Sir Clifford Sifton in 1929 (Transcript Vol. 13, Page 1762).

A good description of the Crow's Nest Pass Rates is to be found in the words of the Prime Minister, Mr. Diefenbaker, in 1959, when he said:

"The Crow's Nest Pass Rates are part of a bargain that was made between the Railways and the Government on the one hand, and the settlers who went west on the other hand."

(4) Subsequent History of the Crow's Nest Pass Rates

The Commission has heard a plethora of evidence on the suspension and various amendments of the Crow's Nest Rates which have been made from time to time since 1918.

Briefly to recapitulate, the timetable of events which affected the original Crow's Nest Pass Agreement, is as follows:

- 1918 - Suspension of Agreement by Order-in-Council (later ratified by amendment to the Railway Act of 1919)
- 1922 - Restoration of Crow's Nest Pass Rates on grain and flour so far as east-bound traffic is concerned.
- 1924 - Crow's Nest Pass Rates restored on west-bound traffic.
- 1924-
- 1925 - Proceedings before Board of Railway Commissioners and Appeals to Supreme Court at instigation of Railway.
- 1925 - Introduction of Section 325 of the Railway Act cancelling Crow's Nest Rates on all commodities other than grain and flour, and making rates applicable to all grain and flour moving eastward on railway lines from any railway point on prairies to Fort William/Port Arthur.
- 1927 - Board of Railway Commissioners directed the Canadian Pacific to adjust rates on grain and flour from all Western points to Fort William to Crow's Nest Pass level.
- 1927 - Board of Railway Commissioners directed that rates on grain and flour moving through Pacific Coast ports for export should be reduced to Crow's Nest Pass level.

It is clear that the 1918 suspension cannot be regarded as other than a war emergency, temporary, action of the Government, in no way intended to put an end to the Agreement. This view is confirmed by the fact that the terms of the Agreement were partially restored in 1922 and wholly restored in 1924.

During the period 1924-25 the Canadian Pacific Railway sought to make the intent of the Crow's Nest Pass Agreement unworkable by putting forward a proposition that the rates should only apply to points on its lines which were in existence at the time of the original Agreement. Despite the victory which the Railway won in the Courts, it was obvious from the action of the Government in bringing in the 1925 legislation, that it was convinced that such a construction was not in the minds of the signatories in 1897.

So far as the effect of the embodiment of the principal terms of the Agreement in the Statutes is concerned, the view has been expressed by various parties before the Commission that this legislation put an end to the contract as a contract and substituted instead, what are purely statutory rates. This apparently was the view taken by the Turgeon Royal Commission as evidenced by the terms of the Report of that Commission (Report of the Royal Commission on Transportation, Ottawa, King's Printer, 1951, Page 244). The findings of the Commission in this connection seem to have been based on the construction of speeches made in the House of Commons in the Debates on the 1925 amendment to the Act by Mr. Graham, the Minister of Railways and Canals, particularly on a statement made by the Minister as follows:

"This Bill is a bold piece of legislation in order to get rid, not only of the Crow's Nest Pass Agreement, but of a score of agreements all of more or less importance We are trying to get rid of a number of agreements -- and we have a number of agreements on the Intercolonial, some of small importance, some of greater importance -- in order to give the Board of Railway Commissioners a fair chance."

However, as was demonstrated in the cross examination of Mr. Edsforth by Mr. Mauro and Counsel for the Association, at Pages 1654 to 1659 and Pages 1767 to 1772 of the Transcript, in the course of the same debate in the House of Commons, the same Minister and also the then Prime Minister, Mr. Mackenzie King, made other and more numerous remarks which seem to be directly contradictory to the statement already quoted.

These Ministers of the Crown made such statements as:

"The Honorable Mr. Graham, Minister of Railways:

"Now, there are two things that parliament can do; it can insist on having the Crow's Nest Agreement remain in force in its entirety or it can remove it altogether from the statute books. But a third and middle course might be taken, and we are asking parliament to remove from the agreement that part relating to westbound traffic, leaving to the prairies and the west for the future all the benefit they have ever received, and more too, I think, on grain and flour."

(Transcript Vol. 12, Page 1654)

"Mr. Hoey:

"There is no reference to the westbound rates on grain and flour?"

"Mr. Graham:

"There never was. In this Bill we are sticking to the terms of the Crow's Nest Pass Agreement. I want to explain again that if we started in to make a wholesale tariff for all the different parts of Canada, which is the business of the Board of Railway Commissioners, I am afraid parliament might not make a very good job of it. Consequently we are sticking to the terms of the Crow's Nest Pass Agreement. We are not making new legislation except in the manner I described a few minutes ago, eliminating that portion of the Crow's Nest Pass Agreement relating to westbound traffic but retaining every item of benefit the prairie provinces have had heretofore on grain and flour. Now, let me read the proposed amendment. We have got to the point where all the traffic but the westbound traffic is still under the Crow's Nest Pass Agreement, and the balance is put under the Board of Railway Commissioners."

(Transcript Vol. 12, Pages 1656, 1657)

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"Mr. Mackenzie King:

"In regard to allowing the maximum rates on grain and flour to remain, I would point out to my friends from British Columbia that the government is not

adding restrictions to the railway commission, but is rather subtracting from the limitations which the Crow's Nest Pass Agreement had imposed in the protection afforded the middle west. In other words, it is allowing part of that agreement to remain, but it is taking away part. To that extent some sacrifice is being required of the middle west, but inasmuch as the railway commission is not given a free hand to equalize rates all over Canada regardless of the maximum rates that are being fixed for the middle west, to that extent also some sacrifice is being required of other parts of Canada. I ask, is it possible to gain support for any policy which demands a sacrifice only at one point and not at other points?

"In the interests of national unity, in the desire to bring about a policy of equalization of rates, the government realizes that some sacrifice must perchance be temporarily borne by each of the provinces. We have sought to make that sacrifice as equal as we can as respects all parts of the country.

"Now while we are taking away a part of the Crow's Nest Pass Agreement under this arrangement, the government is extending the security with respect to flour and grain to an area much beyond that which was fixed in the original agreement."

(Transcript Vol. 12, Pages 1658, 1659)

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"Mr. Graham:

"Are we to do away with the Crow's Nest Pass Agreement altogether? As I pointed out, a great many people think we should. But the Crow's Nest Pass Agreement having been in force, the government decided that, along the lines they are proceeding, they would give a fair chance to the people in every part of the Dominion and thus avoid injustice to those in certain sections."

(Transcript Vol. 13, Page 1768)

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"Mr. Graham:

"The fact is that the Crow's Nest Pass Agreement is allowed to remain on the statute book as regards grain and flour. The Crow's Nest Pass Agreement never affected British Columbia, and there is no clause in the bill or in the amendment which has any reference to British Columbia or that will in any way affect the decision of the Board of Railway Commissioners adversely to British Columbia."

(Transcript Vol. 13, Page 1771)

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"Mr. Graham:

"May I answer that question? If a Government did not stand as the buffer, the whole Crow's Nest Agree-

ment would have been wiped out at this session by an enormous majority. The government has been trying to protect my hon. friend so far as it could, and now it gets abuse for doing so."

(Transcript Vol. 13, Page 1772)

In reading the speech of Mr. Graham quoted first above, in its proper context, it seems probable that the Minister used the words "Crow's Nest Agreement" where he intended to use the words "Manitoba Agreement" for it is to this latter Agreement that the Minister had been referring previously.

If it is accepted that the words "Crow's Nest Agreement" were used correctly then the sense of the whole of Mr. Graham's speech is distorted.

After reading the above quotations, in their proper context, it is easy to appreciate why in Court, references to the proceedings of legislative bodies are not permitted when attempts are made to construe the meaning of ordinances issuing from such bodies. In any event, the words of Subsection 6 of Section 325 of the 1925 Act make clear, it is submitted, that the Agreement was perpetuated rather than discontinued by this legislation. Reference is here made to the phraseology "rates on grain and flour shall be governed by the agreement", which phraseology gives no indication of an intention to terminate the "Agreement" referred to - quite the contrary. Reference is also made to the cross examination of Mr. Edsforth by the Association's Counsel at Pages 1772 - 1774 of the Transcript.

Leaving aside for the moment, the strict legal position, the fact remains that successive Governments have, except in times of national emergency, upheld and perpetuated what they regarded as the cardinal feature of the Agreement, that is to say, the guarantee of a fixed rate for the haulage of grain produced on the prairies to export positions. All the other terms of the Agreement which have been altered by Statute cannot be regarded as going to the root of the contract.

(5) Position of Canadian National Railway Company so far as
Crow's Nest Pass Agreement is Concerned

It has been argued that the extension of the Crow's Nest Rates

applicable to the traffic moved by the Canadian National Railway Company places a special hardship on that Railway in view of the fact that it was not a party and indeed, was not even in existence, at the time the Canadian Pacific Railway concluded its bargain with the Government of Canada. If the Canadian National Railway were an ordinary commercial enterprise then this argument might have considerable force. But even if the Canadian National were a private enterprise company it might still be reasonable to expect it to carry grain and flour to export positions at rates very much lower than those which the Railways now deem to be fair and proper rates for this movement. The factors which make a low export grain rate desirable, which have already been touched upon, would still apply with equal force. The special position of the Canadian National Railway as a government-owned enterprise will be dealt with later.

(6) Effect of the Existence of Crow's Nest Rates on Different Geographical Areas in the Country

It has been stated before many times, but the Association feels that the point is worth emphasizing, that the existence of the Crow's Nest Rates on grain do not impose a hardship on any geographical area of Canada. This view was accepted by the Turgeon Royal Commission (See Report of Royal Commission on Transportation, Ottawa, King's Printer, Page 252). In brief, the Turgeon Commission accepted the views that:

- (a) Shippers in the Maritimes were enjoying the benefits of the Maritime Freight Rates Act and so were shielded from any increase in rates which might otherwise fall on them because of the existence of the Crow's Nest Pass Rates;
- (b) The shippers in the central provinces "are in such an advantageous position in comparison with those of the west as to make it clear that they require no relief under existing conditions". The advantageous position is, of course, brought about by the existence of intensive lake, canal and road competition for the carriage of all types of freight;
- (c) The shippers in the prairies, of goods other than grain and flour, while they may have to pay rates higher than they would if the Crow's Nest Rates were not in existence,

do not complain about these rates. This is presumably because they believe the Crow's Nest Rates make for strength in the agricultural economy which redounds to the benefit of the whole economy in the West;

- (d) Shippers in British Columbia enjoy the benefit of competitive transcontinental railway rates, and so are protected against any increases to which they might claim to be subjected because of the existence of the Crow's Nest Rates.

If, as the Railways argue, the Crow's Nest Rates are unremunerative to them, then the effects of this circumstance are visited upon the railways rather than on any specific group of shippers. The position of the railways will be dealt with later.

(III) BRANCH LINE POLICY:

(1) Historical

There can be no debate upon the fact that the majority of branch lines in western Canada were built for the purpose of opening up the Prairies, that they were built for the purpose of inducing settlement and that they did in fact induce settlement. The major traffic which was anticipated was grain and throughout the years since the construction of the first branch line in western Canada the major traffic has been, and presently is, grain.

Relying upon the presence of such rail lines and the implied representation that such lines would continue to give service, lands were homesteaded along the railway lines, farm buildings were constructed, schools were built, the pattern of roads developed and communities sprang up.

The evidence before your Commission has indicated that during the period 1923-1959 the Canadian Pacific Railway received in cash subsidy for branch lines a total of \$3,274,569.00 and land grants for branch lines of 1,609,000 acres.

(Transcript Vol.113, Page 18747)

(2) Nature of Branch Lines

The evidence of Mr. R.A. Emerson, Vice-President of Canadian Pacific Railway Company, would indicate that the phrase "branch lines" is difficult of definition. His evidence on this point

reads as follows:

"There seems to be a concept that branch lines can be divorced and separated from main lines and put one in one category and one in another category - I do not think that is a realistic way to look at the situation, if I may say so. The fact is that branch lines and main lines are all part of the railway system. The difference - and it is only a difference in degree - is that the main lines are the through traffic handling arteries while the branch lines are the traffic originating or, in some cases, terminating lines if you like. Main lines, of course, generally have to one degree or another traffic originating potential on them. Some branch lines, in addition to carrying the traffic which originates or terminates, carry some through traffic. So there is no clear and sharp distinction."

(Transcript Vol. 113, Page 18753)

(3) Effect of Abandonments upon those Abandoned

- (a) The financial plight of most farmers today is such that added costs weigh on them much more severely than on any other section of the community. Any additional hauling imposed upon the farmer increases his cost of operation. In the words of Mr. A. P. Gleave, President, Saskatchewan Farmers' Union - "Well, the further you haul a bushel of grain the more it costs you." (Transcript Vol. 35, Page 5606) Mr. Gleave's evidence as to the position of branch lines on the Prairies is also pertinent - "The Railways and even the branch lines have been the hub of the activity on the Prairies, they have been the centre of the whole development and operation." (Transcript Vol. 35, Page 5607) Evidence as to the social and economic disturbance created by an abandonment would be found in the evidence of Mr. W. J. Parker of Manitoba Pool Elevators, speaking about the abandonment of the Rapid City Sub-Division, where the additional haul involved was approximately 7 to 15 miles.
- (b) At the present time and for the foreseeable future, long-distance hauling of grain by truck is not in the opinion of the Association, a practical possibility in western Canada and on the cost of providing alternative transport, we would refer again to the evidence of Mr. R. A. Emerson as follows:

"Although unit costs on branch lines are greater than for main line operations, these costs are, in most cases, significantly less than the costs of providing

the transportation by other transport media; branch lines provide the lowest cost method of performing the transportation job. . . .

"It is difficult to generalize on truck costs, but evidence placed before the Board of Transport Commissioners recently indicates the cost of moving grain a distance of 20 miles by highway as some 8.1¢ per ton mile or approximately 1/4 cent per bushel a mile with trucks of 54,000 lbs. gross vehicle weight and assuming a 15-ton load. The cost would be greater in the case of smaller capacity trucks."

(Transcript Vol. 109, Page 18243)

The withdrawal of rail services implies the end as economic units, of those villages and towns affected. The farmers are obliged to haul their grain to other delivery points and would normally do business at such other points with the result that the business places in the abandoned villages and towns - the stores, cafes, garages, hotels - as well as residences suffer an immediate, substantial and real reduction in value. The market value of farmlands and farm buildings owned by those farmers who are called upon to make deliveries at more distant points would suffer a reduction in value upon a rail abandonment.

- (c) In considering the economics of abandonments, your Commission should, it is submitted, have regard to the economic effects upon such towns and farms and should have regard also to the investment of grain handling organizations running in value to some hundreds of millions of dollars in elevators, annexes and other facilities along the railway lines of western Canada. An elevator company's fate is completely bound up with the railways and elevator companies have committed large amounts of capital in the faith that the service given by the railways would not come to a precipitate end. The evidence before your Commission clearly indicates that elevators located on abandoned lines are valueless and even as local storage would be impractical. The abandonment would have the same effect upon such elevator assets as an expropriation except that in the case of the abandonment no compensation is paid for the assets lost.
- (d) There have been various suggestions before your Commission as to possible alteration in the western grain gathering process. In

this regard and in reply to a question by Mr. Commissioner Mann, Mr. N. R. Crump, President of the Canadian Pacific Railway, replied:

"It seems to me, Commissioner Mann, that I saw an article in the paper a day or two ago where the head of the research department of Canadian National had spoken on that. I think that there is to a degree a rationalization going on all the time. Of course, Dr. Solandt spoke of the ideal as commencing of now. Now, we have a large plant out there and grain gathering is basic to that plant, it being some 40 per cent in western Canada, and I am speaking of the Canadian Pacific now.

"As time goes on that plant will change, will become rationalized, but I suggest that to do it now it is beyond our means in this country because it would mean a complete revision of the grain storage facilities internally in western Canada, and to replace all of the line elevators in western Canada now with new and larger capacity elevators at today's replacement costs would be a tremendous problem, and for that reason I think that that rationalization is going to be worked out over the years; it will take place but it will take place within a number of years in a sane and businesslike manner."

(Transcript Vol. 28 - Pages 4120, 4121)

- (e) Evidence was also presented to your Commission that abandonment of lines, with consequent demolition of country elevators would result in reduction of grain storage capacity in western Canada at a time when present storage capacity is fully required.
- (f) In considering branch line abandonments, your Commission will wish to consider the evidence to the effect that such abandonments would normally require the provision of new roads and the further evidence that deliveries by road are frequently hampered through weather conditions in the winter and load restrictions in the spring.

(4) Canadian Pacific Does not Have a Branch Line Problem

- (a) The impression has apparently been gained in some quarters that Canada has a major branch line problem. Canadian Pacific Railway led convincing evidence to the contrary as is apparent from the following excerpts from the Transcript:

".....I think it is to be regretted that because of some statements made in these proceedings there is a general feeling in some areas that there is a large branch line problem"

(Transcript Vol. 109, Page 18246)

"There are still some people, unfamiliar with the essential ingredients of an efficient railway system, who state that Canadian Pacific has a branch line problem. This opinion, which is apparently based on some language from the Report, is quite unsound. It overlooks or

ignores the tremendous development in the economy and the growth in traffic since 1932 which has had the effect of Canada growing into its railways."

(Transcript Vol. 109, Page 18241)

"Branch lines are physically connected to main lines and thus are an integral part of the railway plant. Their function is to generate traffic volume for the railway system as a whole."

(Transcript Vol. 109, Page 18241)

- (b) The evidence of the Canadian Pacific Railway as to the present significance of the report made in 1932 by the Duff Inquiry might also be considered:

"The Duff Inquiry was conducted at a time when the depression was a matter of real concern. Branch line construction in the Prairie Provinces in many cases preceded development and time was required to generate the traffic potential of these lines. Viewing this situation in 1932 when the construction of the lines had been barely completed and at a time when the economy was in a severe depression, it is not unexpected that the Commissioners expressed concern as to the marked increase in railway construction. No one at that time could have foreseen the tremendous economic expansion which has occurred in Canada since 1932. In the intervening period the population has increased by about 58%; revenue ton miles on Canadian Pacific by 158%; and the gross national product (in constant dollars) by 255%."

(Transcript Vol. 109, Page 18238)

- (c) Mr. R. A. Emerson, Vice-President of Canadian Pacific Railway expressed the following views upon the economics of branch line movement and the possibility of amalgamation of branch lines:

"Using average total branch line operating costs, it is only where density is less than 25,000 ton miles per mile of road that fewer of the nation's economic resources are required to move traffic by highway than by railway. As I have indicated, there are few miles of branch line on Canadian Pacific where this condition prevails, and far fewer still where road conditions and the topography of the country permit the trucking of bulk and other freight traffic for any distance at less cost in territories served by branch line.

"The possibility of the amalgamation of branch lines has been mentioned in these proceedings. It appears that this suggestion arises at least in part, from the belief that there is extensive duplication of railway branch lines, particularly in Western Canada. There are in fact very few branch lines in Western Canada which make it feasible for one carrier to provide a service to the shippers of another carrier. The reason for this is that the cost of trucking traffic for short distances is much higher per unit. A second reason is that examination of the lines of Canadian Pacific does not disclose any

significant mileage where amalgamation of branch lines is feasible because of topography, distances, road conditions or traffic volume. Moreover, Canadian Pacific is of the view it is important to preserve competition and the freedom of choice by the shipper wherever practicable."

(Transcript Vol. 109, Pages 18244, 18245)

(5) The Position of this Association on Branch Line Abandonments

- (a) This Association recognizes the problems faced by the railways, in common with all other business, in the matter of rising costs and this Association welcomes the evidence given before your Commission of the efforts being made by the railways to increase efficiency and reduce costs. To this end, it is only proper that the railways should review the earnings position of their various lines.

This Association does not take the position that railway branch lines should never, under any circumstances, be abandoned.

The Association, however, does very firmly take the position that a line should not be abandoned when the public interest will be prejudiced through the farming people, the villages and towns and all others affected suffering severe financial hardship as a result of the abandonment.

- (b) The Association strongly endorses the submission in this regard of the Government of the Province of Quebec reading as follows:

"We believe that abandoning of railway lines is a very serious matter, involving decisions which should not be taken lightly. The very life of many of our communities in the sparsely settled parts of Canada depends on the availability of adequate transportation facilities. The necessity for such services by the people affected and their views require the fullest consideration before the Board of Transport Commissioners for Canada can consider approving abandonment of a railway line."

(Transcript Vol. 125, Page 20705)

- (c) This Association concurs in the further submission of the Province of Quebec reading:

"We serve notice that we will strongly oppose any abandonment proposals of the railways unless the interests of the people of the communities affected are fully safeguarded and the areas concerned are assured of adequate transportation facilities, which we believe

are essential for further growth and economic developments, for the benefit of the people of the Province of Quebec and Canada as a whole."

(Transcript Vol. 125, Page 20707)

- (d) This Association endorses those representations to your Commission to the effect that longer notice be given of any intention to abandon (for example - the evidence of E. C. Nelson, President, Farmers' Union of Alberta - Transcript Vol. 36, Page 5817, "It could be ten years, twenty years. It might be longer".), and that the Board of Transport Commissioners should more frequently than is presently the case, delay in the appropriate instances, the effective date of an abandonment after the decision to abandon has been reached. This Association also favors the suggestion that before proceeding with any abandonment applications, the railways should be required to consult with those interests affected by the abandonment with a view to early exchange of views.
- (e) Your Commission may also consider it desirable that projected branch line abandonments be considered by the Board of Transport Commissioners, not haphazardly as at present, but at fixed periodic times and in groups. In other words, every three, four or five years, the railways would present to the Board, all applications in respect of lines contemplated for abandonment during the succeeding three, four or five years, as the case might be.

Present methods of hearing these cases breed apprehension in all communities situated on branch lines which may be vulnerable. Each year these communities naturally wonder whose turn will be next. Implementation of the plan suggested would mean that at the conclusion of one set of hearings the whole country would know that existing lines would be retained at least for a known period. The proposal would be of particular use to those owning facilities dependent upon the existence of rail service, such as elevator companies who would be able to plan building and repair programs with some degree of confidence as to, at least, the short term future.

- (f) The Association commends to your Commission, the very pertinent views expressed by the Premier of the Province of Manitoba:

"... as we have already indicated the operation of rail transportation facilities in Canada was not predicated solely from the viewpoint of railway profit. There is the broader aspect of public convenience and necessity."

(Transcript Vol. 29, Page 4250)

- (g) The Association would like to recall to your Commission the paragraph from the Judgment of the Board of Railway Commissioners for Canada - Canadian Railway Cases, Volume 33, Page 280 - quoted in Vol. 29 of the Transcript, Pages 4304 and 4305, as follows:

"The fact is that a main line without branches would be as unprofitable as branches without main line connections. The long main line haul under highly favorable conditions is what gives the railroads their net returns. But a single main line in such a region as the Canadian West could not secure enough traffic along its location alone to profitably employ the costly facilities which it provides. In order that the main line may be profitable it must have traffic and it can only get sufficient volume of traffic by means of branches. The railway system is made up of its main line and branches, each playing an equally important part in the general scheme of producing profit by giving service. It is not possible to disassociate one from the other and produce the desired result."

- (h) We would recall to your Commission the evidence (Transcript Vol. 55, Page 10155) of Mr. David Kirk, Secretary-treasurer of the Canadian Federation of Agriculture, replying to a question by Commission Counsel as to whether elements of public interest come into consideration of branch line abandonments. Mr. Kirk stated:

"Well, we do think, first of all, that elements of public interest do come in.

"Our position on that is that we recognize that the question of branch line abandonment is a very valid question, and that no doubt there are cases where these lines should be abandoned in the interests of avoiding unnecessary costs to the railways. We think, though, that the procedure of deciding whether or not the abandonment will be permitted with any particular line should take into account the importance of that particular line to the users, the adequacy of alternative services and the economic consequences to the people affected. I think it becomes essentially a matter of public policy. But, at the same time, we do think there is a field for abandonment and for savings here.

"To get down to more detailed criteria than that - I don't think that I am sufficiently knowledgeable on the subject to do that."

Mr. Kirk later added during cross examination by Canadian Pacific Railway Counsel:

"... there are community and economic consequences to the user - to the public in the area of the branch lines - that must be taken into consideration in equity to them"

(Transcript Vol. 56, Page 10240)

- (i) A number of western farm organizations dealt with the subject of branch line abandonments. A cursory study of their submissions might lead one to the conclusion that they supported a policy of accelerated line abandonments. Careful study of such submissions however, indicates that any such policy should, in the view of the organizations concerned, be exercised subject to the various restraints and conditions contained in their respective statements.

In the present argument we have sought to make clear the views of the Member Companies of the North-West Line Elevators Association, representing ownership of almost one-half of the grain elevators in western Canada, and expressing what the Association believes to be the views of the 100,000 farmers served by Member Companies of the Association.

- (j) Dr. George E. Britnell, in answer to a question from the Chairman as to his ideas about low density lines, stated in part as follows:

"That, Mr. Chairman, is something that we are quite prepared to leave to the judgment of the Board of Transport Commissioners under the Line Abandonment Policy which they pursue. It is an extremely difficult problem. We don't feel that you can lay down any general principle about it. It has got to be on that balance of railway convenience against the convenience of the public and everybody concerned before you can discontinue a service or a line. It is an extremely important decision to arrive at, to abandon a railway service or a railway line."

Transcript Vol. 91, Page 15543)

- (k) Finally, this Association is further of the opinion that the clamor raised in some quarters for branch line abandonments evidences a distressing lack of confidence in the future of our rural areas.

We are confident in the future of western agriculture and its ability to make an ever increasing demand upon transportation facilities. We are also confident of the successful outcome of the earnest efforts being made to increase industrialization in the rural centres of the Provinces.

(6) Present Jurisdiction and Practice in the
Matter of Line Abandonments

- (a) One of the persons appearing before your Commission (Michael Awada) referred to:

"... the fact that they (i.e. the railways) are made to submit to very strict and perhaps impossible requirements before they are permitted to abandon railway lines."

(Transcript Vol. 51, Pages 9539, 9540)

- (b) There further was read to your Commission evidence of Mr. Donald Gordon, President of the Canadian National Railways, before the Committee of Railways, Airlines and Shipping, when Mr. Gordon is stated to have said:

"... when it comes to abandonment of lines . . . that carries very fierce opposition,"

and again:

"the resistance and the objections that are raised every time makes the practice very difficult indeed."

(Transcript Vol. 76, Page 13481)

- (c) When one considers that line abandonment normally means the death sentence to the towns and villages affected and very substantial losses of assets and property values to a wide variety of people, it is hardly surprising that there should be fierce opposition, resistance and objections. As to the matter of requirements before railways are permitted to abandon branch lines the evidence before your Commission would indicate that:

- (i) Section 168 of the Railway Act provides that a railway company may abandon the operation of any line of railway with the approval of the Board but shall not do so without such approval.

- (ii) The rule followed by the Board in applications for leave to abandon is that stated by the Board in D. E. & E. vs Princeton 45 C.R.C. 178 at 197:

"The issue in each case where abandonment is sought resolves itself into a question of, 'whether the loss and inconvenience to the public consequent upon the abandonment outweighs the burden that continued operation of the railway line involved would impose upon the railway company'."

- (iii) That the Board has shown willingness to allow abandonment - see footnote 24 to the evidence of the Province of British Columbia. (Transcript Vol. 41, Page 6938)

- (d) Your Commission can, we believe, take judicial notice of the result of the abandonment applications made by the railways in western Canada during the past few months, namely:

Amaranth - Alonsa - a distance of 17.76 miles (C.N.). The Board permitted the abandonment as at June 1st, 1961.

Reston - Wolseley - a distance of 122.18 miles (C.P.). The Board permitted the abandonment as at August 1st, 1961.

Wakopa Subdivision - a distance of 79.9 miles (C.N.). The Board ordered that 18 miles of the line between Deloraine and Nelson should be retained and that the remaining 62 miles should be abandoned as at August 1st, 1961.

Southall-Nepture - a distance of 21.1 miles (C.P.). The Board ordered that the operation of the line serving Tribune, a distance of approximately 6 miles, should be retained, but that the remainder of the line serving Maxim and Neptune, a distance of approximately 14 miles, should be abandoned as at August 1st, 1961.

Hallboro-Beulah - a distance of 74.4 miles (C.N.). The Board ordered that this line be retained.

The result is that in respect of applications totalling 315.34 miles, the Board ordered the abandonment of 215.94 miles and the retention of 99.4 miles.

This would not indicate any particular reluctance on the part of the Board of Transport Commissioners to the granting of permission to abandon branch lines.

- (e) We might also refer to Mr. Gordon's evidence before your Commission (Transcript Vol. 10, Page 1328) and the acknowledgement by him of the success of the Canadian National Railways in abandonment applications - this evidence preceded the hearings mentioned in sub-

paragraph (d) above. Mr. Gordon stated:

"In my experience it does not matter what it is that the railways wish to discontinue there will be objections from some opinion in the country. Now, if we do not take cognizance of that and choose our timing, and perhaps do a little conditioning of public opinion, then we would not have the success we have had, and that, in some part, is the reason for the delay."

(7) Proposals of the Railways for Amendment of Section 168

- (a) The Canadian Pacific Railway's proposed amendments which, if the railway company establishes that a line is uneconomic, imposes a statutory obligation on the users of the line to show sources of revenues sufficient to make the line profitable, is, in the opinion of this Association impractical and wholly objectionable. By applying only the economic test the railway ignores its historical position in western Canada, it ignores its status as a public utility, it ignores entirely the public interest. The availability or otherwise of suitable alternative modes of transport is ignored. The extra cost which may be imposed upon the public as a result of having to resort to more costly transportation methods, assuming such are available, is ignored.
- (b) Both railways sought without success to secure from witnesses before your Commission support for the concept of a shifting onus. In the opinion of this Association, such a concept runs counter to the basic principles of British justice and is without precedent in any public utility or comparable legislation. It introduces the question of the legal right of a Province or a Municipality to guarantee revenues to a federal undertaking and if it is contemplated that individual users of the line are expected to "show sources of revenues sufficient to make the line profitable," it will either impose an intolerable and unjust burden upon such individuals or will be plainly unworkable.
- (c) The C.N.R. proposal gives the company the right to abandon "whenever the revenues from the operation of the line fail to meet the cost of operation."

This proposal is, in the opinion of this Association, ob-

jectionable for the same reasons as that of the Canadian Pacific Railway. It has two additional objectionable features in that it apparently does not require a Board hearing, and secondly in practice would no doubt involve the Federal Cabinet in almost every abandonment case. We believe it correct to state that no witness other than Railway employees supported the view that the economic test alone should prevail or the view that the burden should be upon those seeking continuance of the life of the branch line.

- (d) It is urged that the present legislation applying to branch line abandonments is fair, reasonable and is working to the general satisfaction of all concerned. For example, we would refer your Commission to the evidence of J. E. Brownlee, Q.C. (Transcript Vol. 81, Page 14217) - "Except in one respect (i.e. provision for delaying a hearing) the present law, as it is presently administered, appears to provide adequate safeguards as to proposed abandonments for the interest of both railways and of communities they serve."

As is stated by one of the C.P.R. witnesses: (Transcript Vol. 113, Page 18743) "placing it before the Board of Transport Commissioners gives each party of interest a right to be heard and make their representations." This would seem to be a fair and reasonable method of dealing with abandonment applications. It is urged that such method continue and that the parties opposing the application should not be given the impossible tasks contemplated by the amendments proposed by the railways to Section 168 of the Railway Act.

(IV) - SOLUTION TO PROBLEM OF INSUFFICIENT RAILWAY INCOME

(1) Position of Railways in Canada

One theme which has consistently run through almost every submission made to the Commission has been that Canada requires an efficient and vital railroad industry. The Association supports this view most heartily. Despite the spectacular rise in the manufacturing industry which has taken place in the last twenty years, Canada's economy is still heavily dependent on production and export of primary products. Most of these primary products must travel long distances

to points where they can be processed or exported. The centres of production of many of these products are remote from access to sea, lake or even road transport. Whatever patterns develop in the carriage of passengers or whatever developments take place in other transportation media, it seems likely that for as long as can be foreseen vast and probably increasing tonnages of goods will be moved throughout Canada by rail.

(2) Railway Income from Crow's Nest Rates

The Railways have presented evidence to the Commission to the effect that the carriage of grain and flour under Crow's Nest Pass Rates does not yield them a profit and indeed results in them incurring substantial annual losses. The evidence produced by the Railways on this subject was compendious, detailed and extremely technical. The Association believes that in technical cost studies of so complicated a nature, it is difficult to be dogmatic as to the interpretation of the figures produced by such studies. However, the Association knows that the Commission's own experts and the experts of other parties appearing before it have scrutinized the results of these studies carefully, and the Association is content to abide by the conclusions the Commission reaches as to the correct interpretation of these figures. The Association is aware that it may well be that the Railways do in fact incur a deficit in moving grain and flour under the Crow's Nest Rates. However, it is also stated by the Railways that at present other parts of their transportation business are carried out at a loss, for instance the carriage of passengers and related services. At other times other parts of the transportation services they provide may move into a deficit position. It is also clear from the evidence presented by the Railways that the revenues derived from many sectors of freight traffic whilst they may cover the expenses of the individual movement and make some small contribution to overhead, do not produce anything like the full commercial return which the Railways expect from the Crow's Nest traffic.

(3) Railway Income Requirements

It is the Railways' contention that in order to remain economically healthy and efficient they require extra income from the rail

transportation section of their operation. It has also been stated by many parties appearing before the Commission that such extra revenue cannot be obtained from further successive general freight rate increases without

- (a) severely limiting the effect of each successive increase because of attrition of rail traffic which such increases would cause and
- (b) injuring sections of the economy through burdening them with an excessively heavy freight bill.

There seems to be little doubt that the Railways do need extra rail income and the Association in the light of its knowledge of general economic conditions would not be surprised if the Commission found that the economy could not at present bear further general freight rate increases.

(4) Source of Extra Rail Income

If the Commission finds that the extra rail income which the Railways require cannot at least for some time, be derived from freight traffic then it seems that the only other source from which this income can come is subsidy.

In general the Association is opposed to the payment of Government subsidies to any commercial enterprise unless the services performed by the enterprise to be subsidized are essential in the national interest and, lacking a subsidy, would not be adequately performed. So far as the first consideration is concerned there can, as has been stated, be little doubt but that the Railways' services are essential in the national interest. The situation also seems to meet the second test. It seems apparent that if the railways do not get extra income their rising costs will sooner or later precipitate a crisis in railway affairs and presumably make it impossible for them to provide satisfactory rail services.

There are further circumstances which place a subsidy to the two major Railways in a different category from a subsidy to a normal commercial enterprise. Dealing first with the position of the Canadian

Pacific it is apparent that this Railway, from the time of its conception, has not and never could have been an ordinary commercial enterprise. To facilitate its formation and make its development possible, it received subsidies in lands and money. During the course of its history it has been the recipient of or a channel for other subsidies and assistance from time to time. Perhaps more than any other private enterprise the Canadian Pacific performs services which are vital for Canada's economic health. The Company has recognized its role as a national organization by providing and maintaining services which it considers in the national interest although these services may not be remunerative at particular times.

The Canadian National Railway is in a special position also. The Canadian National Railway is not an ordinary commercial body. It is an instrument of national policy. As a practical matter it would seem to be of little moment whether any financial assistance given to the Canadian National Railway by the Government was awarded by a subsidy linked to one specific movement, by some general subsidy or merely by the Government underwriting any loss the Railway might suffer in the course of the year's operations as is done at present. The Canadian National Railway argues that it would be helpful for the morale of its staff if the Railway could be moved from a loss to a profit position. Such a development might well be the case although it would be difficult to gauge the extent of the effect. However, it would hardly seem worth jeopardizing the economic basis of the western agricultural economy for the sake of a possible improvement in the morale of the staff of the Government-owned railway system.

(5) Amount of Subsidy and Manner in which it is Paid

If the Commission decides that the only solution to the Railways' revenue problem is by way of subsidy, then the problem of how this subsidy should be calculated and paid has to be faced. The Railways have requested a subsidy based on the grain moving under Crow's Nest Pass Rates. The Association is opposed to the payment of a subsidy on

this basis. If the grain movement is carried out at a loss there are, as has been stated, other rail movements in the same category. There are also rail movements which yield much less than the full commercial return sought by the Railways on the Crow's Nest Rate movement. To link the subsidy to the grain movement would be to distort its meaning. The subsidy is intended to benefit the Railways and through them the whole population of the country as shippers and receivers of freight. So far as the Canadian Pacific Railway is concerned, the carriage of grain under the Crow's Nest Pass Rates in their present form, is the result of an obligation which the Company undertook, rightly or wrongly, prudently or imprudently, in the past. It would be anomalous if the Government were to grant relief to that Railway in respect of this one contract without taking into account all the other operations of the railway. As has been stated it is considered that the position of the Canadian National Railway in this context is not significant. On the other hand, were a subsidy directly linked to the grain movement to be granted, it seems certain that this subsidy would immediately become a target for criticism by spokesmen of other regions and other interests in the country. There would be constant pressures for the reduction or the elimination of the subsidy and resultant national disunity. It is not unreasonable to suppose that if a subsidy in the form requested by the Railways were granted, it would not be long before rising railway costs would absorb the whole of it, and then the western farmer's guarantee of reasonable freight rates would have been forfeited for the sake of a temporary alleviation of the Railways' income problem.

It is perhaps significant that the financial problems of Canadian Railways are not unique. Apparently almost all the Railroads in the United States are faced with similar problems, and all but one or two of the European Railways, most of which are state owned, are similarly faced with the shortage of income from their rail operations.

Under present circumstances it seems that the annual subsidy that the Railways will require is the difference between the income the Railways need in order to keep efficient and viable and the amount which

they can collect from all sources of freight revenue. Both these amounts are bound to be variable from year to year, and during the period in which the subsidy is payable, the determination of these levels, apart from their initial determination by the Commission, might conveniently be devolved to the Board of Transport Commissioners by a suitable amendment to the Railway Act. As the transportation industry as a whole is at present in an epoch of revolution and development, it is obvious that it would be undesirable for a subsidy of this nature to become a permanent feature of the operation of Canadian Railways. For this reason its payment in the manner suggested should probably be limited to a certain fixed period, such as five years, after which the need for the subsidy could be reviewed and if it was found to be unsuitable could either be eliminated or its character altered.

(6) Advantages of Competition

Whatever solution the Commission may recommend to the problem of the inadequate Railway earnings, this Association considers it essential that the identity of the two large Canadian Railway systems should be preserved so that competition between them can continue in the future. It is the firm belief of the Association that without the spur of competition any business will be less efficient than would otherwise be the case. The Association believes that nothing beneficial could result from the nationalization of the Canadian Pacific Railway Company, a step which has been suggested in evidence before the Commission.

The Association believes that had there only been one major railway system in Canada, it would be quite probable that the average shipper would have to pay more for the movement of his freight than he does now.

(7) Purpose of any Subsidy Awarded to the Railways

The Association believes that the purpose of any subsidy paid to the Railways should as the Province of Saskatchewan suggested, "be consistent with established national policy and ameliorate to some extent the unequal impact of such national policy. It should promote the flow of traffic and thereby foster a closer economic relationship

between all parts of Canada. It should mitigate to a degree the divisive effect of great distances by absorbing the portion of the transportation cost and blunt, to some extent at least, the sharp edge of any future general increases. It should be applied in such a manner as to avoid discriminating between different regions and thereby be regarded as a truly national subsidy, one from which all parts of Canada may benefit while still achieving one of its main objectives, that of redistributing the burden of transportation costs." In addition, the Association believes that if the subsidy be of a general nature, related to need and not to any commodity movement, its payment should be conditioned upon the Railways maintaining services on branch lines which, even though in a deficit position, are desirable in the public interest.

If despite the Association's argument to the contrary, the Railways are paid a subsidy directly linked to the grain movement, then credit for a proportionate part of such subsidy should be allowed in the ascertainment of railway revenues in branch line abandonment applications. An appropriate provision would require to be made in the Railway Act to provide for this.

The Province of Manitoba advanced the suggestion that the link between the subsidy and the maintenance of branch lines could be achieved by means of a Branch Line Trackage Maintenance Fund. Under this proposal a Fund would be established by annual Government contributions. Then when in a branch line abandonment case it was proved that the Railway was operating a branch or part thereof at a loss, but the Board of Transport Commissioners considered the continued operation of the line to be desirable in the public interest, the Railway concerned would receive an annual payment from the Fund. Presumably the test which the Board would apply would remain the same as that which is used at the present time. It appears to the Association that this proposal requires serious consideration, although in the view of the Association the periodic application by the Railways to the Board, as contemplated by the proposal, might well be on a triennial rather than annual basis. As was mentioned previously, the Association considers the retention of

many branch lines, particularly in Western Canada, to be essential for the economy of the country.

(8) Other Suggested Means of Awarding Subsidy

The Canadian Pacific Railway Company suggested that the Income Tax Act be used as the instrument of relief. The United Grain Growers in their submission, suggested that in establishing permitted levels of railway rates, the Board of Transport Commissioners should be precluded from allowing income tax as an expense to be covered thereby, and that the Income Tax Act should be amended so that there was excluded from taxation, rail income of those companies whose rates are subject to regulation under the Railway Act. The Association strongly opposes these proposals of the Canadian Pacific Railway Company and of the United Grain Growers Limited.

The Association believes that to use the Income Tax Act as an instrument of relief is to abuse the purpose of the Act. The real intent of the Act is to raise money from the income of all persons resident in Canada for the purpose of meeting national expenditures. It is a first principle of all taxation theories that taxes should be imposed on a fair and equal basis. The more exceptions and privileged taxation classes that are created, the less fair is the system and the more burdensome do taxes become on the taxpayers who are not specially favored. It is not necessary for the Association to look beyond the bounds of the industry in which its Members are engaged to perceive the adverse effects which can flow from unequal taxation. The Association's Members as free-enterprise, joint-stock companies, labor under the full burden of corporate taxation. Their co-operative competitors are able to so conduct their affairs that they drastically limit their liability to pay income taxes. Apart from the great disparity between the rates of income tax paid by the Member Companies of the Association compared with those paid by the co-operative grain handling organizations, co-operatives can declare patronage dividends to their customers, who are usually also their shareholders, but refrain from actual payment of these dividends for long periods, sometimes running into the lifetime of a customer. The result

is that co-operatives obtain loans of this money untaxed and interest-free for the development of their businesses. They thus have a tremendous trading advantage over their competitors. In the grain industry recently several companies have had to give up the unequal struggle and sell their assets to their co-operative competitors.

The Association is aware that the Canadian Pacific's suggestion was probably made because of the income position of its rival, the Canadian National Railway. However, it is strenuously felt that such a consideration should not be allowed to affect the important decision as to the manner in which financial assistance is afforded. This decision should be made with the cardinal principles of equitable taxation firmly in mind. The Association believes any subsidy should be labelled as such.

DATED AT Winnipeg, this 6th day of February, 1961.

All of which is respectfully submitted.

THE NORTH-WEST LINE ELEVATORS ASSOCIATION

By


R.G.B. Dickson


A.J. McKichan

Of Counsel.

submitted to the
ROYAL COMMISSION ON TRANSPORTATION
by the

BRITISH COLUMBIA LUMBER MANUFACTURERS ASSOCIATION
PLYWOOD MANUFACTURERS ASSOCIATION OF BRITISH COLUMBIA
and
CONSOLIDATED RED CEDAR SHINGLE ASSOCIATION OF BRITISH COLUMBIA

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MR. CHAIRMAN AND MEMBERS OF THE COMMISSION:

This written argument is based on the evidence tendered on behalf of the above-named Associations at the hearings of your Commission at Vancouver, B.C., on February 23rd and 24th, 1960, (transcript, Vols. 39 and 40, pp. 6411-6637). It is confined to five points only, all of which are matters of grave concern to the forest industry of Canada's west coast and to the members of the said Associations.

1. FLAT PERCENTAGE INCREASES:

As pointed out in the evidence, Vol. 39, pp. 6419-6423, the application of the principle of flat percentage increases in freight-rates by the Canadian Railways has resulted in serious distortion of rate relationships between producing regions, has disrupted long-standing differentials, and has aggravated the disadvantage already suffered by long haul shippers. We believe that flat percentage increases should be modified by the application of hold-downs on rate increases applicable to basic raw materials such as lumber, plywood and shingles. We are of opinion that the principles of rate-making as practised in the United States in this respect are sound and that they should be adopted by the Canadian Railways.

2. LUMBER AND LUMBER PRODUCTS GROUPINGS:

We would again stress to the Commission the importance of adjusting the Canadian freight-rates structure to eliminate the differentials between, lumber, plywood and shingles. We feel the same rate per 100 lbs. should apply to lumber, plywood and shingles from all Canadian origins to all Canadian destinations. (Transcript, Vol. 39, p. 6427).

3. CANADIAN LUMBER AND LUMBER PRODUCTS RATE STRUCTURE:

A reference to the evidence (Vol. 39, p. 6428) shows that, under the Canadian Rail Freight-Rate Structure for lumber and lumber products, freight-rates are much higher in Canada for similar distances than U.S. freight-rates on such commodities. We respectfully submit that this disparity should be corrected and urge that the Commission recommend that Canadian rates be brought into line with those for equivalent mileages over U.S. lines.

4. SWITCHING:

A four-mile interswitching limit is not in keeping with the industrial growth that has taken and is taking place in Canada. Such a limit involves the payment of additional charges in a great many areas, with a consequent increase in the delivery price of goods to the customer. The Canadian Railways have consistently refused to extend this limit and, in view of their reluctance to do so, we respectfully urge that the Commission recommend an extension of the limit or direct an immediate investigation into the problem of the unjustifiable additional costs to shippers which result from a limit which is completely inadequate under today's conditions. (Transcript, Vol. 39, p. 6430).

5. CROW'S NEST PASS GRAIN RATES:

We respectfully draw the attention of the Commission to our earlier submission on this contentious problem, which is found in Vol. 39, beginning on p. 6423. We believe that the solution suggested by the late Chief Justice Sloan (p.6424) is sound. We respectfully urge that the Commission include in its report a recommendation to the same effect. We repeat the words used by his lordship in his Report:-

"If I am right in my conclusion that the direct and indirect effects of the Crow's Nest Pass rates are a major contributing factor to the present situation in which the Railways find themselves, and the evidence before me can lead me to no other rational conclusion, then it is my respectful opinion that some share at least of this burden should be shouldered by the people of Canada from the National Treasury."

We also respectfully suggest that, if and when relief is granted to the carriers of the onerous burden which results from the statutory and related rates on grain and grain products, commensurate reductions in the rates on lumber, plywood and shingles should be ordered, effective at the time of such reductions.

ALL OF WHICH IS RESPECTFULLY SUBMITTED.

BRITISH COLUMBIA LUMBER
MANUFACTURERS ASSOCIATION


J. V. Christensen, President

PLYWOOD MANUFACTURERS ASSOCIATION
OF BRITISH COLUMBIA


for R. Humphreys, President

CONSOLIDATED RED CEDAR SHINGLE
ASSOCIATION OF BRITISH COLUMBIA


S. J. Dumaresq, President

Vancouver, B.C.
February 7th, 1961.

SUBMISSION

of

SASKATCHEWAN TIMBER BOARD
PRINCE ALBERT, SASKATCHEWAN

to

THE ROYAL COMMISSION ON TRANSPORTATION

February, 1961

To: Mr. M. A. MacPherson, Q. C.,
Chairman,
Royal Commission on Transportation,
OTTAWA

Mr. Chairman and Members of the Commission:

Further to our submission of February 15th, 1960, we wish to present for your consideration the following information and comments.

Since the date of our submission we have again taken up with the railways the question of our pulpwood freight rates from Saskatchewan to Wisconsin, and they have authorized a small reduction averaging 4¢ per cwt on rough green pulpwood only. This reduction, on the basis of the usual agreed weight of 4,100 lbs per cord, comes to \$1.64 per cord. This still leaves our freight rate on rough green pulpwood at approximately \$20.32 per cord from Saskatchewan to Wisconsin Rapids, Wisconsin.

Some upward adjustments have been made in the United States rates but a new low rate has been established from Lander and Riverton Wyoming to Kaukauna Wisconsin. This new rate of \$11.25 per cord (for shipments in lots of 10 carloads) for a distance of 1,430 miles works out to .38 cents per ton-mile and is a further indication of what aggressive carriers can do when necessary to generate additional traffic.

The comparison of rates from Saskatchewan to Wisconsin with U.S. long-haul pulpwood freight rates now stands as follows:

<u>From</u>	<u>To</u>	<u>Average Distance miles</u>	<u>Single car</u>	<u>In ten car lots</u>	
			<u>Rate per cord</u>	<u>Rate per cord</u>	<u>Rate per ton-mile</u>
			\$	\$	¢
*Saskatchewan	Wisconsin Rapids, Wisconsin	1,017	20.32	20.32	.97
*Montana Wyoming Colorado	All Wisconsin mills	1,230	15.75	15.75	.62
South Dakota	All Wisconsin mills	808	12.71	8.95	.54
*Lander & Riverton, Wyoming	Kaukauna, Wisconsin	1,430	12.71	11.25	.38

*These rates and mileages are the average of the published rates shown on the attached Exhibit 1.

It will be seen that the newly authorized rates from Saskatchewan are still far from being competitive with the long-haul rates from United States shipping points to the same market.

The reason given by Canadian railways for their inability to compete with these United States rates is the high cost of carrying the traffic by the Canadian railways as compared with the cost to the United States railways. The reason for the higher cost of carrying this traffic by Canadian railways, we are told, is the low density of traffic on Canadian railways as compared with the density on the United States railways.

We believe the above reason warrants careful examination as it reveals a serious error in the thinking on the part of the Canadian railways on this question.

In saying that Canadian railway costs are high because of low density of traffic, they are obviously speaking of Overhead or Fixed Costs, costs which, in total, remain more or less constant whether the volume of traffic increases or decreases. On a unit of volume basis, (per cord, per ton or per car) these costs will be high if the volume is low and will decrease as the volume of traffic increases.

The Direct Costs of moving a carload of pulpwood would be lower in Canada than in the United States because of the somewhat lower prevailing wage rates in Canada. The United States long-haul freight rates from Montana, Wyoming, Colorado and South Dakota must yield a revenue higher than their own Direct Costs and must therefore be substantially higher than the Direct Costs of Canadian railways.

The fact that Canadian wage rates are lower means also that pulpwood can be produced and put on the car in Canada at a lower cost than the cost of this work in Montana, Wyoming, Colorado and South Dakota. If the Saskatchewan long-haul pulpwood rates were competitive with these long-haul U. S. rates, Saskatchewan pulpwood would move to Wisconsin in much greater volume than it can now move. We estimated in our aforementioned brief that the Saskatchewan shipments would rise by 100,000 cords annually and quite possibly by 200,000 cords if we could move the wood at rates competitive with the U. S. long-haul pulpwood rates.

As has been said above, these competitive rates would yield the Canadian railways a revenue that would be substantially more than sufficient to cover Direct Costs. That is, a part, at least, of their Overhead Costs would also be covered. The revenue would provide a means of covering some overhead or

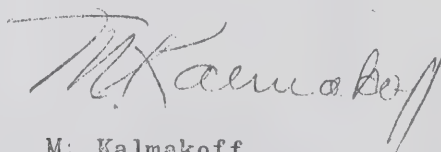
Fixed costs which now, are not covered at all. Obviously, it would be much better for the Canadian railways, economically, to have this additional traffic at these competitive rates than not to have it at all.

The Railways are refusing to meet the competitive pulpwood rates because they want higher rates so as to cover more of their Overhead Costs but by this very refusal to meet competition they are holding back a large volume of traffic and failing to cover any part of the Overhead Costs which the revenue from this traffic would be covering.

The Railways should also take into account the fact that the production of this volume of pulpwood would provide employment for a large number of cutters, truckers and loaders and that the railways would have a further revenue from the equipment, groceries and supplies which would be transported to these men.

We submit that this policy of Canadian railways works to their own detriment. In reaching directly for higher revenues from higher rates they are restricting traffic and the effect of this restriction is detrimental to themselves and to the Canadian economy.

Respectfully submitted,



M. Kalmakoff,
General Manager

MK*bc

EXHIBIT I

LONG HAUL FREIGHT RATES ON PULPWOOD
FROM - SASKATCHEWAN AND UNITED STATES POINTS
TO - WISCONSIN MILLS

	<u>Miles</u>	<u>Rate</u> Per cwt.	<u>Green Rough</u> Per cord @ 4100	<u>Cents per</u> ton-mile
		¢	\$	¢
<u>FROM - SASKATCHEWAN</u>	<u>TO - WISCONSIN RAPIDS, Wisconsin</u>			
Armit, Sask.	951.6	.47	19.27	.99
Hudson Bay, Sask.	968.0	.47	19.27	.97
Townsmen, Manitoba	876.9	.47	19.27	1.06
Reserve, Sask.	953.9	.47	19.27	.98
Hipawin, Sask.	1061.7	.51	20.51	.96
Prince Albert, Sask.	1110.8	.51	20.91	.92
Big River, Sask.	1196.1	.57	23.37	.95
<u>FROM - FAR WESTERN STATES</u>	<u>TO - WISCONSIN (Mileages shown are to Wisconsin Rapids)</u>			
Butte, Montana	1271.		15.75	.60
Judith Gap, Montana	1107.		15.75	.69
Creede, Colorado	1311.		15.75	.58
Walden, Colorado	1150.		15.75	.66
Lander, Wyoming	1345.		15.75	.57
Encampment, Wyoming	1198.		15.75	.64
Deadwood, South Dakota	830.5		multiple car 8.95 single car 12.71	.53 .75
Rapid City, South Dakota	785.6		multiple car 8.95 single car 12.71	.56 .79
	<u>TO - KAUKAUNA, Wisconsin</u>			
Lander, Wyoming	1442.		multiple car 11.25 single car 12.71	.38 .43
Riverton, Wyoming	1419.		multiple car 11.25 single car 12.71	.39 .44

FINAL ARGUMENT

of

GREAT WEST COAL COMPANY, LIMITED

AND

MANITOBA AND SASKATCHEWAN COAL COMPANY (LIMITED)

A. FACTS

This argument is based upon the submission made to the Royal Commission in February of 1960. The basic facts pertaining to this industry then presented still obtain except that the competitive struggle with natural gas has intensified and the industry is even less able than before to bear the burden of any unnecessary transportation charges.

Transportation charges exceed price of coal.

The lignite coal industry of South-East Saskatchewan faces an unique transportation problem. The mine price of coal has remained nearly constant since the War at \$2.00 per ton and is greatly exceeded by the freight rates to its principal markets. For example, the rates to Winnipeg, a distance of 282 miles, \$3.70 and \$3.30 per ton for domestic and industrial coal.

Advantages arising from nearness to market and low transportation costs not realised by companies.

The mines are located near their principal markets in the Winnipeg/Brandon area. Basically, haulage costs are low because the coal is shipped in large trains, over easy grades and without terminal charges at either end. These favourable cost factors are not reflected in the rates paid by the companies. In particular, the mines have not benefited from their natural geographic advantage because the same flat cents per ton increases have been applied to lignite as to other coals moving longer distances in all the postwar freight rate increases. Indeed, the slight advantage given to lignite coal by the Western Rates Case of 1914 has been substantially eaten away by these increases.

Continued existence of industry imperilled by recent freight rate increases because of natural gas competition.

By every possible device, the mines have reduced operating costs so as to maintain the low price of their product. It is perhaps an unique achievement for this industry to have maintained this price in the face of postwar inflation. However, the efforts of the industry to retain its markets have been frustrated, to a large extent, because of the increases in freight rates, which constitute the industry's largest cost component.

Since 1957, the industry has been exposed to the aggressive competition of natural gas. It is particularly unfortunate that in this period, it has had to bear the burden of additional freight rate increases and, as a consequence, has been grievously hampered in its life and death competitive struggle with natural gas.

No form exists for consideration of overall effect of freight rates on lignite industry

The lignite industry's experience, since the War, before the Board of Transport Commissioners shows that no opportunity now exists for a particular industry to have the overall effect of existing freight rates or proposed increases realistically reviewed and assessed. In general freight rate increase cases, the industry has found that the Board cannot consider whether its competitive position as against other forms of energy would suffer as a result of price increases forced by a rise in freight rates. Likewise, the industry has found that a special complaint against the adverse effects of freight rates on the industry's competitive position compared to oil and natural gas proved abortive. The narrow criteria by which the Board is compelled (or feels compelled) to assess the justness and reasonableness of rates do not permit an assessment of the adverse competitive effects of rates on an entire industry. The process of equalisation, which the industry has also invoked without final decision by the Board, does not seem appropriate for this purpose.

The industry is therefore in a position of being able to demonstrate from its own long and unrewarding experience before the Board of Transport

Commissioners that the limited terms of reference of the Board appear at present to prevent any proper consideration of, or relief from, the disadvantages imposed on it by freight rates.

Negotiations with railways not entirely satisfactory or prompt.

The lignite industry feels that the railways have an almost greater stake in the retention of coal traffic than the industry itself because of the fact that transportation charges are higher than the price of the coal. Accordingly, the industry has felt that there is much scope for the negotiation of rates which will retain traffic and thereby be mutually advantageous to both the industry and the railways. However, experience has shown that the railways have not always been prompt to recognize the danger of loss of traffic and to take corrective action to reduce rates to save it. Several unfortunate examples exist of railways offering lower rates which might have preserved the traffic after markets had become irrevocably committed to natural gas or oil. As a result, the industry, believes that some procedure for assisting critical rate negotiations should be devised.

Unique experience of lignite industry basis for proposals.

It will be realised that the following proposals are based upon the lignite industry's extensive experience in endeavouring to preserve its competitive position by attempts to have the adverse effect of high transportation charges reviewed and reconsidered by the Board of Transport Commissioners. It is possible that few other industries have been so consistently represented before the Board of Transport Commissioners in the postwar years and have such a vital stake in the development of better procedures for the consideration of their problems.

B. PROPOSALS

1. Procedure for appraising overall effect of freight rates on hard pressed industries essential.

The inability of the Board of Transport Commissioners to appraise the effect of general freight rate increases on the competitive position of particular

industries is an anachronistic survival from an earlier era of rate regulation. In the case of lignite coal, which faces competition from other forms of energy transmitted largely by pipe line, it is unrealistic to continue to judge the justice and reasonableness of rates only by the classic formulae of comparison with other rates when the whole existence of the industry is threatened by a competing commodity enjoying a less costly method of transportation. It also appears unrealistic to suggest that the Board of Transport Commissioners does not assume the functions of an economic planning board when it fails to consider the overall effects of unnecessarily high freight rates on the economic survival of an industry. Its very failure to give consideration to these vital competitive considerations means, in effect, that it passes judgment by default against the lignite coal industry.

It is submitted that where a hard pressed industry, such as the lignite coal industry, demonstrates that its existence is imperilled as a result of competitive disadvantages created by high or increased freight rates, the Board of Transport Commissioners or some other competent tribunal, such as the Dominion Coal Board, should be authorized to review and appraise all the implications of such rates. Where it is demonstrated, as a result of such an appraisal, that existing or proposed rates threaten to destroy an industry's markets and, as in the case of coal, deprive the railways of traffic, the Board of Transport Commissioners should be authorized to direct such adjustments as appear necessary.

2. Encouragement of negotiations between railways and industries to preserve traffic.

Where existing rates or proposed increases threaten to deprive an industry of its markets, it is submitted that the Board of Transport Commissioners should intervene actively to assist negotiation of an appropriate rate which will preserve traffic and be fair to both the industry and the railways. In such circumstances, it would be helpful to both parties if the facts were established by the intervention of the impartial Board of Transport Commissioners in giving statistical, economic and other information which would facilitate agreement. Such active assistance would speed up negotiations and help to avoid the possibility of traffic being lost, as it has in the past, before negotiations are concluded.

3. General review of rates with emphasis on cost of service.

Traditionally, some benefit has been conferred on lignite rates as compared to other forms of coal on the basis of the value of service principle. Such advantage has long since ceased to have much significance because it has been eroded by successive flat cents per ton increases and rendered obsolete by the competition of other forms of energy transmitted by pipe line. It is submitted that the rates on the movement of lignite coal should now be reviewed and revised on the basis of cost of service. It is imperative that lignite should enjoy the benefit of its close proximity to its main markets and the low cost of haulage arising from the use of large trains over easy grades with no terminal expenses. Where, in particular, industries are challenged by competition enjoying the advantage of alternative low cost methods of transportation, it seems essential in the interest of both the industry and the railways to adjust rail rates in accordance with cost. In this way, the full advantage of rail transportation will be enjoyed by both the industry and the public and, in addition, valuable traffic and revenue will be preserved for the railways.

All of which is respectfully submitted.

HERRIDGE, TOLMIE, GRAY, COYNE & BLAIR,
Solicitors for Great West Coal Company, Limited
and Manitoba and Saskatchewan Coal Company
(Limited).

THE ROYAL COMMISSION ON TRANSPORTATION

" " " "

Written Argument Submitted on behalf of The Alberta Wheat Pool, The Saskatchewan Wheat Pool, Manitoba Pool Elevators and United Grain Growers Limited referred to herein as "The Grain Organizations".

1. INTRODUCTION

The Grain Organizations have maintained since the appointment of this Commission that the terms of P.C.1959-577

required a thorough and searching appraisal of railway transportation problems in Canada. Exerpts of the wording of P.C.1959-577 read:

"..... it is in the National interest that a comprehensive and careful inquiry be made with all reasonable dispatch into problems relating to railway transportation in Canada....." and immediately before enumerating specific subjects the wording is "..... to inquire into and report upon the problems relating to railway transportation in Canada and the causes thereof, and to recommend solutions thereto, and in particular, without restricting the generality of the foregoing". It was considered to be inconceivable that the movement of any single traffic, or rendering of any single service was in itself the cause - or indeed a substantial cause - of the problems facing the railways and the Nation to-day.

In the view of the Grain Organizations a railway is to be looked at as an organic whole performing many different functions and nourished from many sources. It is inherent in the nature of a railway that it should carry traffic in different forms such as passenger, baggage, express mail and freight - long haul and short haul, rapid and slow. It is carried in many different kinds of equipment - box cars, flat cars, gondolas, refrigerators, and now piggy-back trucks. Inherent in the great trans-continental systems we have in Canada is the different kinds of terrain to be traversed - mountain, plain, arable lands, forest and rock, some sparsely some heavily populated. Traffic may be dense or light. Some traffic will bear high charges, others

will only move on low tariffs. Service must be given where and when demanded, and demands may be from time to time and from place to place either heavy or light. It is as an organic whole that the enterprise is profitable or not; it is neither practical nor meaningful to say that here a profit arises or there a loss occurs. To attempt to do so is as if a man should praise his right arm as a source of his livelihood as to blame his stomach as a source of expense.

It was felt that rather than assisting an evaluation of railway transportation problems, the narrowing or restricting the issue to a single traffic or single service and "spot lighting" one class of shipper would be detrimental to the Canadian people.

Each of the Grain Organizations appeared separately before the Commission and through their Presidents made separate submissions. Submissions of these four leaders of agriculture in western Canada cannot be disregarded and much weight must be given their views.

In addition to these general submissions and in accordance with their conception of what was necessary to evaluate the problems of railway transportation in Canada at this time, the Grain Organizations retained the services of W.B. Saunders of Washington D.C. to assist them. Mr Saunders was selected after a careful check of his professional qualifications. He was highly recommended and a portion of his qualifications and experience was put in the record and speak for themselves. His extensive work with the I.C.C. in the United States is to be particularly noted.

Mr. Saunders' instructions from the Grain Organizations were twofold. First, Mr. Saunders was instructed to make a general appraisal of the problems of the Canadian Railways. Secondly, Mr. Saunders was instructed to make a study of the cost techniques used by the Canadian National and the Canadian Pacific in their

submissions to the Commission in costing the movement of grain at statutory rates.

The Grain Organizations did not request Mr. Saunders to make an original study on the cost of moving statutory grain. The view of the Grain Organizations is that irrespective of the techniques used, and irrespective of the degree of refinement achieved in such techniques, there must be inherent in such a study a great many assumptions, judgment factors and arbitrary allocation of cost elements which would necessarily produce a result that could be as misleading as sound. If further proof for such a statement were needed one need go no further than examining the results reached by fully qualified experts retained by the Railways and those retained by the Governments of the Provinces of Alberta and Manitoba. This is not to be interpreted as a criticism of the excellent work done by these experts, but merely made in support of the position of the Grain Organizations that the costing of a single traffic moved over such railway systems as the Canadian National and Canadian Pacific is so dependent on judgment factors, arbitrary allocation of cost and assumptions that results at the best are "educated guesses".

2. THE PROBLEMS OF THE CANADIAN RAILWAYS - A GENERAL APPLIANCE

In conformance with the instructions given Mr. Saunders presented to the Commission a general appraisal of Canadian Railway problems. This work is contained in Volume 1 of his submission and forms part of the record. The broad scope of this report deals with the importance of railway transportation to our economy, their share of market, their economics, nature of their revenues and some of the key elements affecting their cost of operations.

It was necessary to appraise the role of Government in the development of our railway systems; to discuss railway lines established and/or maintained for reasons of National policy. It appeared that our modest population and great areal

extent created a problem of light density branch lines, and the same factors coupled with severe competition in very recent years has caused a severe passenger service problem. It was also clear competition had an adverse effect on railway freight revenues necessitating establishment of competitive rates and agreed charges. The significance here is not whether or not the Railways are losing money by establishment of competitive rates and agreed charges but that they are not obtaining as much freight revenue as they formerly did from traffic moving on these rates and charges. Mr. Gordon, President of the Canadian National admitted the Canadian railways share of the total transportation market was declining and such a trend would continue. He accepted the figure of the Turgeon Commission that through competitive rates the railways lost \$50 million of revenue annually at that time and conceded such revenue losses would be greater at this time. (Transcript 1339-1340)

The Grain Organizations find it very difficult to understand how or why all these problems can be largely ignored in the submissions of the Railway Companies appearing before this Commission. It is respectfully submitted that had the Governor General in Council wanted a report limited to a study of the Crows Nest Agreement, or the cost of moving grain to export positions at statutory rates, it would have simply said so in terms far more restrictive than those used.

It is neither desirable nor necessary to review all the material contained in Mr. Saunders' Volume 1, nor all the oral evidence given in support of it, but the Grain Organizations would like to emphasize the following points and for convenience would like to refer to the same under the chapter headings used by Mr. Saunders

Chapter II - The Role of Transportation in Canada's Economy

Chapter III - The Railroad Share of the Market

These chapters are self-explanatory but the comparisons and trends in Canada and the United States are very illuminating. The principal conclusions are

that railway actively represents a declining proportion of the total Canadian economy and (save wartime conditions) by trends of long standing Canadian railways have been subject to steady erosion of traffic - and of course loss of revenue. It does not follow automatically that railway operations (save possibly some degree of curtailment) are not as necessary to the Canadian people as ever, but it certainly does point up the ridiculous position taken by the Railways before this Commission that the study of statutory grain is an adequate study to dispose of these very basic changes with which the Railways are faced. One quick look at Mr. Saunders' Chart III-I (page 31 Vol. 1) is sufficient in itself to clearly demonstrate the effect of competition on railway operations and revenue - and no logical person could possibly suggest any connection between movement of statutory grain and the condition so clearly revealed.

Chapter IV - Role of Government

This chapter, while largely historical, deals specifically with a very old problem in Canadian railroads - extra capacity. Extra capacity automatically incurs extra cost.

Mr. Saunders took very sharp issue with Mr. R.A. Emmerson Executive Vice-President of Canadian Pacific on this issue of excess capacity. Mr. Saunders gave very cogent, and it is submitted unanswerable reasons for his views at pages 22227-22231 of the transcript of evidence. Mr. Saunders referred to the density maps A, B, C & D at the rear of Volume 1 to prove his point. These maps are very significant in details. First, they were compiled from data furnished by the Canadian National in a 1959 study and by the Canadian Pacific in 1954. Secondly, not one single question was directed to Mr. Saunders on the authenticity of these maps by Counsel for either Railway. These maps not being challenged by the operators of the railways must be accepted as being accurate. It is respectfully submitted these density maps are probably as important as any exhibit placed before the Commission. It is to be noted that the

condition of light density and duplicate lines exists throughout the country and are not restricted to any particular area or province.

There was an attempt (presumably) to discredit Mr. Saunders on this question of excess capacity by questioning him on the number of occasions he travelled over Canadian Pacific lines. Certainly no one has to travel a train to appreciate the meaning of the density maps A, B, C & D referred to above. It would be as sensible to say you would have to be a laying hen to know what an egg is.

The Grain Organizations by again bringing to light through their expert this problem of excess capacity and light density lines do not make any direct connection between this problem and abandonment of railway lines. It is fully appreciated many of these light density branch lines are not only desirable but are absolutely essential to the country. There undoubtedly are many branch lines serving remote areas, or areas furnishing other economic benefits to Canada, that may not produce satisfactory revenue - but to suggest their abandonment would be foolhardy. It seems conclusive excess capacity has led to a considerable degree to unnecessary competition in railway services. The attention of the Commission has been called to the necessity of increased co-operation and lessening of competition between the railways in providing services. The question of abandonment to a major extent will continue to be an individual problem to be determined on its particular merits, although as has been suggested by different persons appearing for the individual Grain Organizations as well as Mr. Saunders for the group, much can be done by implementing a long range programme concerning possible abandonments. This question of abandonment will be discussed in more detail under a different heading in this submission.

The principal point the Grain Organizations wish to make here is that excess capacity has been for a number of years and continues to be a major problem of the

Canadian Railways. The necessity for, or the extent of, such excess capacity is entirely another question. It is a problem the Railways, for some reason, did not wish to discuss before this Commission. It does exist and there is no point in burying one's head in the sand and ignoring it. If such excess capacity (or some portion of it) be necessary to properly serve the Nation it is nothing to be ashamed of but surely must be recognized. It is very difficult for the Grain Organizations to understand why the Railways chose to ignore a major problem of this nature and select the movement of statutory grains as "the only inequity" thereby making the western grain producer "the whipping boy" for the Railway financial ills.

Chapter V - Economics of Canadian Lines

This Chapter deals largely with the effect of density of traffic as it relates to railway economics. The text and tables compare densities and its effects between Canadian and U.S. lines. It is submitted that such considerations as mentioned in this chapter are important to appreciate the particular problems facing the Canadian railways. Again it is not a question whether such a situation is wholly bad or rectification is simple - but to show such a situation is or has to be to some extent inherent in railroading in Canada. It is dictated more by our geography, thinly spread population and economic development, and it is believed should be understood by the Canadian public that requires and demands railway services. It is not peculiar to any particular section of the country, and if such a situation creates a burden for the Railways, it should be but a part of the whole National railway transportation problem - not identified by any special relief, but to become a part of the total burden that should be assumed by the entire Nation.

Chapter VI - Branch Lines

It is pointed out in this chapter that the definition ascribed to a branch

line is of no real significance. The important factor is again the traffic density over any portion of railway line rather than the category in which it may be classed by definition. It is pointed out that much trackage was laid for competitive reasons. The wisdom of such construction may now in some instances be seriously questioned. If such managerial decisions were not sound, should we still have the capital invested and maintenance cost charged to a certain traffic in a cost study? It seems that a true cost study should include only what should have been invested rather than what has been invested.

The importance of the problem is indicated by what Mr. Saunders points out (page 72-73). In the Railway Cost Studies cost of money on branches represents 25% of the system's total, while the revenue traffic, in passing over such branch lines (ignoring subsequent movement on main lines) represents under 4% of the total. So calculated, according to the procedures of the Railway Cost Study, the portion per unit of traffic on branch lines resulting from capital investment is six or seven times as high as on the main lines.

The Grain Organizations repeat that here is another important problem area requiring serious attention, and ignoring it as a problem area as the Railways have done, is not very constructive. The Railways have the best information on this problem and their views would have been helpful. It is not contended by the Grain Organizations that branch lines are not necessary, nor have they recommended the discontinuance of any single branch line operation. They merely say that whatever be necessary in the public interest should be had and maintained.

Chapter VII - National Policy Lines

This chapter it is submitted is adequately and completely discussed in the text of Mr. Saunders' submissions.

The significance in so far as the Grain Organizations are concerned is

the necessity of keeping such lines if they in fact now serve the public interest. The burden, if there be one, is a general burden and not something to be attributed to any particular segment of freight traffic, or to any shipper of grain, steel, pulp or railway passengers - east or west. Any attempt in this regard to pit one class or railway shipper or passenger against another can cause untold damage to the Canadian public by development of misunderstandings and recriminations.

Chapter VIII - Passenger Service

It is neither the intent nor desire of the Grain Organizations to place the blame for lack of railways economic well being on the passenger service or any other traffic. Passenger service is a serious problem facing not only Canadian but all railways in Europe, and the United States as well. It is incredible that the Railways in their original studies chose to close their eyes to the problem. It is not helpful to "whistle by the graveyard" in this instance.

It is well beyond successful contradiction that the Railways for the past 20 years or more are continuing to lose short haul passenger traffic to the family car and long haul passenger traffic to the airplane. That such a trend will continue to be adverse to the Railways is equally beyond successful contradiction. It was suggested by responsible railway officers that as the railways had managerial control over passenger service by cutting down services and adjusting fares, the railways could cope with the problem. These observations were made in contrasting such a situation with the movement of export grain at fixed rates.

It is submitted such statements are sheer nonsense. Freedom to adjust passenger fares is only of assistance if the passenger will pay it. The competition for passengers by the family car and airlines is fully as effective in keeping passenger fares at a low level as is Parliament in fixing grain rates.

The magnitude of the problem - from a dollar and cents point of view,

was dramatically set out at pages 103-109 of Mr. Saunders' Volume 1. If the method employed by the Railways in costing export grain movement were also used for costing passenger service, the deficit on a full cost basis for the Canadian Pacific for 1958 would be at least 75 millions of dollars and for the Canadian National 180 millions of dollars or a combined passenger deficit of some 255 millions of dollars. The text of the submission explains in detail the deficits reached.

It must be pointed out these figures were reached by using the railway costing techniques for grain and were not presented as being results of an independent study. However, it is very significant that Railway Counsel did not challenge Mr. Saunders on these figures. It is a very safe assumption Railway Counsel would have rigorously cross-examined Mr. Saunders on figures of this magnitude if their staffs had found them to be in error on the basis they were presented.

The effect of the passenger deficits can be measured another way. Mr. Saunders puts it like this in Volume 1, page 113-4:-

" The burden of passenger service deficits on the shippers of freight can be dramatized in yet another way. The railways have proposed as a criterion for a fair level of earnings a rate of return on net investment of 6 1/2 per cent after payment of income taxes. This translates into a rate of 10.38 per cent before income tax for the C.P.R. and a rate of 10.96 per cent for the C.N.R. These are the rates used to calculate the "cost of money" for handling grain. In 1958, the C.P.R. railway net income was \$57 million before income taxes. If the C.P.R. passenger revenues had been equal to the full cost of providing the service, \$75 million additional revenues would have been received, producing a net income before tax of \$132 million,

which represents a 9.43 per cent return on net investment in railway facilities, less than one per centage point short of the standard that C.P.R. has chosen. This result has powerful implications respecting the freight service.

If the passenger service had earned 10.38 per cent, the total return would have averaged 9.43 per cent, which means that the freight service must have earned a return of over nine per cent before income taxes in 1958."

In light of this unchallenged evidence given by Mr. Saunders, it is hard to believe the railways contented themselves in their original statements and studies to say movement of grain to export positions at statutory rates is the only real problem to be discussed before the Commission. Indeed it was the only problem the railways wished to discuss.

The Grain Organizations are not saying the passenger service rendered the people of Canada (or a large measure of it) to-day is not necessary. It is merely being pointed out that as a problem area in Canadian railway operations it is a much greater problem than movement of grain to export positions. If the burden of passenger service be real - and it appears to be, then again it too should be considered but as a segment of the whole burden and should not be isolated from the entire problem by being made the subject of special relief. It should be "part and parcel" of the whole picture of what the Canadian public as an entity should assume if the National public interest is to be adequately served.

Chapter IX - Small Shipments

This is another problem area not treated by the Railways in their submissions. Mr. Saunders finds a deficit burden of \$80 million on an out-of-pocket basis and \$129 million on the full cost yardstick (Vol. 1 page 119). It is pointed out

that if the C.P.R. received its full costs for handling L.C.L. freight in 1958, as well as full cost of passenger service, that Company's net income before taxes would have been 11.44 per cent of net income - a little better than 1 per cent more than its target rate of 10.38 per cent.

It may well be deficits in L.C.L. traffic may be necessary to adequately serve the Canadian public. If so it should not be concealed or shied away from but recognized as being the problem it is.

Chapter X - Competitive Rates

The discussion in this chapter deals with the competition furnished the Railways by highways, waterways and air transport. Government assistance given these forms of transport obviously places the Railways at a distinct disadvantage in its ability to capture the traffic. Whether or not this be an inequity as defined in P.C.1959-577 may be questionable, but the Canadian public should be made more aware of the fact that whatever financial assistance may be given the railways in future, this form of transport is not the only form getting assistance from governments.

It is pointed out to obtain traffic volume the Railways have been forced to establish competitive rates and agreed charges. Indeed in 1958 traffic moving between Canadian Stations under these rates and charges represented 23 per cent of the total freight revenue. This traffic moved at lower than "normal" rates and while the railways have derived some net revenue it is clear substantial revenue has been lost.

The Grain Organizations appreciate the Railway Companies by force of circumstances found the establishment of competitive rates and agreed charges necessary for their business, but point out that but for the forces of competitive forms of transport (to an extent subsidized by governments) "normal" rates would

have been obtained. The grain traffic is captive traffic, as is a moderate portion of the total freight traffic in Canada. Is this an inequity in the freight rate structure? In any event it surely is a problem area in Canadian railway transportation, and is part of the whole problem facing the Commission.

Chapter XI - Statutory Grain

Mr. Saunders here makes his evaluation of the railways position on statutory grain movement as being the only inequity in the freight rate structure and the inference rates on this traffic should be doubled. He takes issue with the premise and at page 131 of Volume 1 points out the result is that statutory grain is being asked to produce a profit factor about 2.5 times as great as the average traffic. It is here that Mr. Saunders points out the core of many items of cost in the railway studies is "branchness" rather than "grainness".

The Grain Organizations submit that for the National policy reasons, the competitive features of railroad construction, historical background, etc., all these branch lines were constructed across the country and if Canada requires them to serve the people such of those lines in western Canada should not be chargeable in a cost study to export grain movement alone. What branch lines in western Canada that in fact now serve the grain movement may be one thing, but what would be necessary if the system were constructed de novo may be an entirely different thing.

The Grain Organizations repeat that the railway studies referred to by Mr. Saunders in this chapter is a far cry from meeting all the problems relating to railway transportation in Canada.

Chapter XII - Conclusion

This chapter of Mr. Saunders' Volume will be dealt with in the conclusions of this written argument.

Volume II - Costing Methods

This volume presented by Mr. Saunders deals with the cost techniques used by the Railways in their submissions to the Commission.

It is respectfully submitted that the criticisms made by Mr. Saunders in no sense suggests bias. Indeed, both in text and during his cross-examination Mr. Saunders was very complimentary of the work done by the railways in the cost study presented. It is important however to realize that such a study, like many other cost studies, of necessity relies on a number of assumptions, judgment factors, judgment in prorating cost and arbitrary decisions. Mr. Saunders' discussion on fixed costs, short term variable costs as well as long term variable cost points up the fact the results are only as sound as are these judgment factors.

It is also to be noted that no attempt has been made to cost the traffic on an optimum basis, or even what plant should be required. The Railways took total costs, as if such expenditures were necessary and simply allocated by a technical method that portion they felt should be charged to movement of statutory grain.

Mr. Saunders points out that these railway studies in pricing out statutory grain rely on the principle of prorating the joint costs. The studies depend on various techniques for separation of fixed and variable costs. A number of these separations are statistical and rest on statistical assumptions. A number of these separations are arbitrary in varying degrees and general judgment is employed as to the extent of variability associated with particular expenditures.

It is for general reasons such as the above, coupled with the more technical analysis of equations and regression method made by Mr. Saunders in Volume II, that the Grain Organizations submit the results of such studies must be kept in proper perspective. The results of such studies cannot reasonably be accepted as an answer in which this Commission can place such a degree of reliance

that can be safely accepted and acted upon. This is not to say for some purposes (probably to a greater extent for managerial decisions) such studies cannot be seriously looked to, but as a reliable measure of costing a single traffic movement such results are highly questionable.

The Grain Organizations are quite prepared to leave to the Commission and its staff the evaluation of Mr. Saunders' technical criticisms of the railway cost studies, and no further reference will be made herein to the "Critique of C.P.R. Track Expense Regression", "C.P.R. Use of Average Train Weights" nor "C.P.R. Treatment of Car-Day Costs for Box Cars".

Special mention is made of the section dealing with Cost of Money - Volume II, pages 56 - 58. This section is brief and it is submitted, cannot be better summarized or stated than has been done in the Volume. This was an issue one might expect a serious challenge from the Railways, in cross-examination, and as such was not done the fair inference is that it could not be successfully challenged.

The Grain Organizations, for their own part, submit the Railways have failed to demonstrate that the costing of statutory grain as presented has the degree of reliability sufficient to enable the Commission to make a specific finding on the matter. The difficulties involved in such a study cannot be overcome by the effort put into their production. The assumptions, arbitrary decisions, judgment factors, etc. are still contained in the study. This was the general conclusion reached by the Turgeon Commission and the situation and problems of moving grain are still the same.

Statutory Grain Rates - "Crow's Nest Agreement"

The Grain Organizations are adamant in their view there should be absolutely no interference with the so called Crow's Nest grain rates. They are equally strong in their views that these rates should never be removed from the sole jurisdiction of Parliament.

These views are taken irrespective of whether or not these particular rates are compensatory or non-compensatory for the issues, history involved, the importance of export grain markets to Canada are the matters of real significance.

It is the considered view of the Grain Organizations that both Railway Companies, by in effect wholly disregarding the scope of P.C. 1959-577 - "... a comprehensive and careful inquiry ... into problems relating to railway transportation in Canada ...", and asserting movement of statutory grain to export positions is the only inequity (and presumably problem) in the freight rate structure, are attempting to "single out" and "spot light" the western grain producer as having special treatment to the detriment of other shippers and users of railway facilities. Indeed the inference is being made the "Crow's Nest Rates" is a vicious and ancient agreement favoring a special class at the expense of others. It is submitted that "in a nutshell" this is the complete submission of the Railways.

The Grain Organizations submit the time is long overdue to correct the thinking of the Canadian public concerning these statutory rates. It has been very popular in recent years for responsible railway officers in public speeches, before Administrative Boards and before Royal Commissions, to complain about rates "established in Queen Victoria's time". This admittedly is a catchy phrase and can arouse public sympathy among the uninformed. In itself of course such a phrase proves nothing. It is being used as if it were self proving. It is commonly known that many goods and services are lower to-day than in "Queen Victoria's time". Electric rates, telephone rates, consumer goods have been substantially reduced through modern technical and production methods. The safety razor and ball point pen originally cost the producer many many times the cost paid for such items to-day. The point to be made is that because the rates have been of 60 years standing does not prove the rates are non-compensatory. In the movement of grain great strides have been made in recent years. Diesolation has enabled the Railways to haul longer trains in larger

cars to great cost advantage. Modern unloading facilities has enabled more efficient use of grain cars. There are undoubtedly many more technical improvements lowering the cost of the movement.

The volume of the movement, the fact the Railways neither load or unload the commodity, the fact the cars are fully loaded, etc., are also matters warranting a lower rate than most other commodities.

For a long time efforts, not completely unsuccessful, have been made to create a popular belief these statutory rates are set for the sole benefit of the western grain farmer. The Grain Organizations are hopeful this erroneous impression will be corrected. The statutory grain rates have been established and maintained for the benefit of the country as a whole. It is to be specifically noted that, apart from the Railway submissions, the evidence presented before the Commission is strikingly free of implications that statutory grain rates are objectionable. Indeed, the Province of Quebec (which is not a grain growing province) in its discussion of these grain rates took the proper and broad outlook, and, it is submitted, supported their retention. Canada's export wheat is of prime importance to the Canadian economy. In order to compete with grain growing nations closer to tide water, Canada's grain grown chiefly in the heart of the continent must have low transportation cost. This was the basis on which people were encouraged to grow grain on the western prairies, and whatever else has changed since Queen Victoria's time, geography and distances between the prairies and the lakehead have remained the same.

It is respectfully submitted that this pitting of one railway customer against another; one section of the country against another has caused and will continue to cause serious friction and problems in Canada. It should be the aim of all responsible corporations to minimize sectionalism in Canada - not encourage it.

It is not intended to review in detail all the ramifications of the Crow's

Nest Agreement. It has been reviewed before other Commissions and adequately reported upon. It should be pointed out, however, that due allowance must be given to the benefits obtained by the C.P.R. in entering this agreement. And benefits should not be restricted to the specific agreement. The Canadian Pacific were granted large blocks of land by building a railroad across Canada. These lands have proved to be very valuable. Surely it is matters of this kind that prompted the containment of:

"(d) Whether, and to what extent, the Railway Act should specify what assets and earnings of railway companies in businesses and investments other than railways should be taken into account in establishing freight rates;" in P.C.1959-577.

The Crow's Nest Agreement should not be a "one way street".

The C.P.R. surely cannot complain about the burdens and neglect the benefits.

Sir Edward Beatty as President of the C.P.R. in 1938 expressed the view the Crow's Nest Agreement was a good thing for Canada, for the farmers and the Canadian Pacific. It is a fair inference that the then President of the contracting company did not mean it was an unprofitable transaction so far as railways are concerned - and Queen Victoria was not reigning in 1938! Dieselation and many other operational improvements have taken place since Sir Edward's day.

The old adage "Throw so much mud at a wall and some will stick" is perfectly true here. Severe criticism of the Crow's Nest Rates over the years is bound to have some effect, but no matter how often the criticism be given nor how harsh the terms proves in fact such criticisms are warranted.

Proposed Changed in Legislation

The Canadian National recommends S.53(1) of the Railway Act be amended so that the Governor-in-Council will have no power to vary or rescind an order,

decision or regulation of the Board which has been the matter of a judgment of the Supreme Court of Canada following an appeal to that Court taken under Section 53(2) (Transcript page 18478).

The Grain Organizations have read the reasons advanced for such an amendment, but contend the basic and all important reason for such powers being vested in the Governor-in-Council have been wholly missed. The reason for legislation of this kind is to enable the government of the day to act promptly in the public interest. Reasons for judgments rendered by the Supreme Court of Canada and by the Transport Board may be perfectly valid for the issue to be decided. The significant thing is, however, that the government has a much wider responsibility to discharge. If the public interest demands a different result, the government of the day must be able to act. The government will be accountable to Parliament for its conduct, and the Members of Parliament to those they represent. The arguments of the C.N.R. could be applied with equal force to the abolition of Orders-in-Council which are provided in many statutes.

If these powers of government are abused it should be left to Parliament to check, rather than to reduce these important powers used exclusively in the public interest.

Both Canadian National and Canadian Pacific have made recommendations concerning abandonment of lines. (C.N.R. Transcript page 18479; C.P.R. Transcript page 18248). The relevant section of the Railway Act affected by the proposed amendments is Section 168.

It is respectfully submitted that the approach taken by the Canadian Pacific is a narrow one. In essence the Canadian Pacific proposal is that the decision of the Board of Transport Commissioners be final as to continuance or non-continuance of service. The suggestion is that the burden of proof as to whether or not a railway

line costs more to maintain than the revenue derived from its operation be placed on the users. A very unique, and it is submitted a very impractical suggestion. Somewhere - Somehow - the Canadian Pacific has completely dropped the very basic issue - the public interest.

Railways in Canada are at least quasi-public utilities and discontinuance of service should conform with well established practices of discontinuance of service in public utilities. The public interest is of paramount interest and the burden of proof should always rest with the operator. For all practical purposes these services are monopoly services and it is well established that owners and operators of services of this nature cannot elect to operate only profitable sections of the service and discontinue the unprofitable segments. This whole problem is much broader than determining only the question of whether or not the service operates at a profit or loss.

The Canadian National is not as severe in its suggested amendments as to abandonments. This Railway recognized the paramouncy of public interest, but says when a service is to be continued for the sole purpose of public interest, the amount of loss suffered the Railway in that specific operation should be paid the Railway from the National Treasury.

The Grain Organizations stoutly resist a scheme of this kind. Any scheme that would cause, or tend to cause, financial relief to be tied to any particular traffic, service or line, is to be absolutely avoided. It is this splitting and dividing; this attempted exposure of any class of freight customer, particular service, or area of the country that causes unnecessary dissension, bad feeling and accusations that one class of customer or citizen is being indirectly subsidized by another. This indeed is a very unhealthy atmosphere in a developing nation.

The Grain Organizations feel very keenly that if the public interest demands the maintenance of certain rates, railway lines and railway services and (assuming

efficient operation), the sum total of such service exceeds revenue obtained for rendering the same, financial assistance should be given on an overall basis and not tied to any class of shipper or user.

The Grain Organizations are opposed to the suggested amendments by the Railways as to abandonments of lines. If abandonment applications are going to continue to be made, a long range programme on abandonments would be of benefit and will be discussed under the headings of Conclusions. During the interim public interest demands applications for abandonments should continue to be handled by the Board of Transport Commissioners under existing legislation.

The suggested amendments for abandonment of passenger train service (Canadian National Transcript 18485; Canadian Pacific Transcript 18267) are objectional for precisely the same reasons as set out above for abandonment of lines. The Railway Act in its entire intent and purpose indicates clearly the obligation of the Railways to give service. The public interest cannot be seconded to economic advantage of the Railways.

CONCLUSIONS AND RECOMMENDATIONS

A. Conclusions

In summation of their position, the Grain Organizations say:

1. That the Railways erred in restricting their submissions, as the two principal railway operators in Canada, to studies relating to the movement of statutory grain to export positions. It is submitted that the intent declared by the wording of P.C. 1959-577 makes it abundantly clear that all problems relating to railway transportation in Canada should be thoroughly investigated and reported upon.
2. That the Railways have failed to demonstrate by a quality of evidence sufficiently reliable to be acted upon, that this Commission is enabled to make any specific

finding as to whether or not the movement of statutory grain to export positions is compensatory.

3. That it has been amply demonstrated that in any event (and in acceptance of railway submissions) the alleged deficits in this traffic is not a major problem of the Railways. Passenger and small shipments deficits (calculated on the same costing methods as applied to grain traffic - and not challenged) exceed very greatly the alleged grain deficit.

4. That a true cost study for any traffic should employ only the plant and capital necessary to move that traffic. Excess capacity does exist. No attempt was made to indicate the efficiency of the plant employed in the railway cost studies but were merely a process of dividing up the number of dollars used.

5. That while the methodology used by the Railways in the cost analysis made was of value and merits further study and refinement, their results cannot be accepted for the purposes advanced, for among others, the effective criticisms made by Mr. Saunders in Volume II of his submission.

6. That competition in the transportation industry has resulted in Railways losing substantial revenues from both freight and passenger service. It has been necessary to establish competitive rates and agreed charges to hold on to a great volume of railway traffic resulting in further losses of revenue. These are real problems and in no small measure account for substantial loss of revenue to the Railways and thereby contribute appreciably to the deficits they allege they are suffering.

7. That benefits accruing to the Canadian Pacific not only from the Crow's Nest Agreement, but by virtue of having built a railway across Canada, together with non-rail revenue flowing therefrom should be taken into account in determining whether or not the statutory grain rates impose any inequitable burden either

upon the Railways or upon other users of freight services in Canada.

B. Recommendations

1. That in no circumstances should the statutory grain rates be removed from the sole and exclusive jurisdiction of Parliament. The economic benefits to the whole country from sale of Canada's grain to export markets is so vital that no administrative Board or Court should be permitted to review, alter, change or in any way interfere with export grain rates.

2. In the event this Commission finds as a result of the evidence placed before it, and on recommendations of its staff, that there be extra capacity and/or duplication of facilities in the railway systems of Canada, any programme for the discontinuance or reduction of railway services should be entered into only on a long term basis. The Grain Organizations are of the opinion that if such a programme be necessary it is essential for the intelligent planning, not only of the Railways but of shippers and industry as well, that as much advance notice as possible be given of proposed curtailment or elimination of railway services. This would enable all interested parties to conform with the programme without serious disruption. If curtailment of service be called for, the programming of the same should not be left with the Railways alone, and consideration should be given to the establishment of a permanent Board or Commission on which railways, shippers and business should be represented.

The problem should at all times be treated and considered on a Nation wide basis to avoid sectionalism, although local representations should always be permitted where curtailment or elimination of service be advanced in the same manner as is now the practice of the Board of Transport Commissioners.

3. That if it be found the Railways in Canada need financial relief because they are providing uneconomic services in the public interest and in support of

national policy, such relief should be on an "overall" basis and not associated with any particular user of railway services. It would be a disservice to the people of Canada to continue the practice of making any particular shipper the "whipping boy" for all railway problems, or pitting one section of the country or class of shipper against another.

4. That while there is a natural dislike of all businessmen for direct subsidy, lest it be detrimental to the efficiency operation, if such be necessary the sole discretion as to its quantum and form be left exclusively with the government of the day. It is the sole responsibility of government to make use of government income to what in its judgment is of greatest advantage to the people. The assumption of such responsibility must carry with it the right to administer.

ALL OF WHICH IS RESPECTFULLY SUBMITTED.

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